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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 3533

WILLIAM E. HILBERT, JOSEPH MAUER, C. W. CURTIS and HARRY M. HOWELL, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,

Petitioners,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE PENNSYLVANIA RAILROAD COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To: The Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, as entered in the above entitled cause on May 29, 1961.

I.

OPINIONS BELOW.

On May 29, 1961, the United States Court of Appeals for the Seventh Circuit rendered its opinion in this proceeding; it is officially reported in 290 F. 2d 881; a copy of such opinion is attached to this Petition as Appendix "A", at page 33 *et seq.*

The entry and judgment of the United States District Court, for the Southern District of Indiana, Indianapolis Division, are not reported; said entry and judgment are attached hereto as Appendix "C" and "D", at pages 43 and 46, respectively.

II.

JURISDICTION.

The judgment of the Court of Appeals was dated and entered on May 29, 1961; a copy of said judgment is attached hereto as Appendix "B", at page 42.

28 U. S. C. Section 1254 (1) confers on this Court jurisdiction to review the judgment in question by writ of certiorari.

III.

QUESTIONS PRESENTED.

A. Whether a railroad, such as Respondent, can issue an all-inclusive "Section 6 Notice" as to the complete elimination of all agreements and the proposed establishment of new agreements with respect to its entire operation, and then shortly thereafter, arbitrarily and summarily abolish and establish some of the same identical working conditions at a particular terminal of the railroad in spite of the *statu quo* provisions of the Act, es-

pecially when the railroad and union are continuing to negotiate and process the "Section 6 Notice" in conformance with the provisions of the Act.

B. Whether the abolishment of many jobs by a railroad creates a major change under the provisions of the Railway Labor Act, and whether the arbitrary and summary refusal on the part of the railroad to negotiate with respect thereto, constitutes a violation of the Act, thereby warranting a union to obtain injunctive relief to prevent the railroad from violating the *statu quo* provisions of the Act.

C. Where a railroad posted Notices and Advertisement Bulletins as to drastic changes in working conditions, to take effect just eitht (8) days thereafter, and where the railroad arbitrarily and summarily refused to negotiate with respect thereto in violation of the Act, was that dispute ripe for submission to the Railroad Adjustment Board, or could the union seek injunctive relief in a District Court to maintain the *statu quo* provisions of the Act.

D. Whether a Federal court can grant injunctive relief to a union and against a railroad from effectuating the changes which gave rise to and constitute the subject matter of the dispute, independently of any suit by the railroad for equitable relief, where the railroad has posted Notices and Advertisement Bulletins calling for drastic changes in working conditions, the loss of many jobs, seniority rights, etc., and the railroad summarily refuses to negotiate with respect thereto.

E. Whether a railway union can seek a permanent injunction against a railroad for violation of the Railway Labor Act, since an injunction is permanent only for the temporary period for which it may last.

IV.

STATUTORY PROVISIONS INVOLVED.

The Railway Labor Act (45 U. S. C. Sections 151-164) is involved in this proceeding. The pertinent provisions thereof are Sec. 1, First, Second, Third, Fifth, and Sixth (45 U. S. C. Sec. 151); Section 2, (1)(4) and (5) (45 U. S. C. Sec. 151 (a); Sec. 2, First, Second, Sixth, and Seventh (45 U. S. C. Sec. 152); Sec. 3, First (i) (m) (45 U. S. C. Sec. 153, First (i) (m)); Sec. 5, First (a)(b) (45 U. S. C. Sec. 155, First (a)(b)); Sec. 6 (45 U. S. C. Sec. 156); Sec. 10 (45 U. S. C. Sec. 160); such pertinent provisions are printed in Appendix "E" at page 48 *et seq.*

V.

STATEMENT OF THE CASE.

Facts.

Petitioners (plaintiffs) are: (a) members of Division No. 25, a local labor organization, the same being a local branch or Division of the Grand International Brotherhood of Locomotive Engineers, the latter being a national or international labor organization: (b) members of the Grand International Brotherhood of Locomotive Engineers; (c) officers and representatives of Division No. 25 and the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; (d) locomotive engineers and employees of Respondent (defendant). (P. A. 5-9.)

Petitioners filed their complaint as and by way of a class action for the reason that all of the members represented by plaintiffs are too numerous to bring before the Court. (P. A. 9.)

The individual Petitioners, and the numerous other employees represented by them, are *employees* within the meaning of such term as specifically set forth in 45 U. S. C., Section 151 of the Railway Labor Act, 63 Stat. 107 (P. A. 9.)

The individual Petitioners, as well as Division No. 25, the Grand International Brotherhood of Locomotive Engineers, and the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers are *representatives* within the meaning of such term as set forth in 45 U. S. C., Section 151 of the Railway Labor Act, 63 Stat. 107. (P. A. 9-10.)

Respondent is a *carrier* within the meaning of such term as specifically set forth in 45 U. S. C., Section 151 of the Railway Labor Act, 63 Stat. 107. (P. A. 9.)

For approximately 100 years last past, there has been a Home Terminal (synonymous with Crew Terminal, P. A. 95) for *engine crews* (locomotive engineers and firemen) of Respondent for both freight and passenger service at Terre Haute, Indiana, as follows: (a) *pool freight engine crews* operating between Terre Haute and Indianapolis, specifically identified as East End Pool Engine Crews, with their Home Terminal at Terre Haute; (b) *pool freight engine crews* operating between Terre Haute and East St. Louis, specifically identified as West End Pool Engine Crews, with their Home Terminal at Terre Haute; (c) *regularly assigned and extra passenger service locomotive engineers* operating in the same directional manner, that is, between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis, with their Home Terminal at Terre Haute; and (d) an *extra list of locomotive engineers* with their Home Terminal at Terre Haute servicing locomotive engineers in categories (a) (b) and (c) above. (P. A. 91-92.)

The terminal for *engine crews* at Terre Haute has been recognized, accepted, and agreed to by Respondent and its employees as being the Home Terminal for those *engine crews*, who are employees of Respondent and members of Division No. 25, and who have operated locomotive engines of Respondent from Terre Haute to Indianapolis, and from Terre Haute to East St. Louis for approximately 100 years last past. (P. A. 91-92.)

Indianapolis has not been a Home Terminal of those employees of Respondent. (P. A. 93.)

Petitioners, and those they represent, reside in Terre Haute or the immediate area thereof; they are primarily engaged in operating *intradivisional* district runs for Respondent between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis, with their Home Terminal at Terre Haute; by reason of their length of service with Respondent, as recognized and contained in the collective bargaining agreement between Petitioners' union and Respondent, and in accordance with the terms of said collective bargaining agreement, Petitioners (locomotive engineers employed by Respondent) established *seniority rights*, which enabled them to apply for *intradivisional* district runs between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis, and thereby also established *intraseniority* rights to such *intradivisional-intraseniority* district runs with the Home Terminal thereof at Terre Haute. (P. A. 92.)

As long as Petitioners, and those they represent, operated the *intradivisional* district runs between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis, on a regular and assigned passenger and freight basis, under their *intraseniority* or *intradivisional* seniority rights, with their Home Terminal at Terre Haute, no other employee of Respondent could rightfully operate said *intradivisional* district runs. (P. A. 93-94.)

The *intrasenionity* district of Petitioners, and those they represent, operating locomotive engines of Respondent between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis, does not include Indianapolis as a part of said *intrasenionity* district, for Ben Davis is the east terminating point or line of such *intrasenionity* district. (P. A. 94.)

Each of the *intradivisional* district runs between Terre Haute and Indianapolis, with the Home Terminal thereof at Terre Haute, involves approximately 78 miles, and the collective bargaining agreement between Petitioners' union and Respondent, expressly provides for the payment of such 78 miles on the basis of 100 miles, that is, locomotive engineers making an *intradivisional* run between Terre Haute and Indianapolis would run only 78 miles, but would be paid for 100 miles, the 22 miles difference being recognized as *constructive miles*, and the payment for such 22 miles being recognized as *constructive allowances*. (P. A. 97.)

There has been in effect also between Petitioners and Respondent for many years last past, what is commonly referred to by the parties as an *arbitrary agreement*, providing for *arbitrary allowances* for Petitioners, and those they represent, who operate freight locomotives for Respondent out of Terre Haute either to Indianapolis or East St. Louis, such *arbitrary allowances* amounting to a certain number of minutes in the form of wages for reporting for work at one place or another in Terre Haute. (P. A. 95.)

Section 6 of the Railway Labor Act, 48 Stat. 1197, 45 U. S. C., Sec. 156, is commonly referred to as the "Section 6 Notice" provisions of the Railway Labor Act (P. A. 10), and among other things, provides that all "rates of pay, rules or working conditions shall not be altered by the carrier" as to matters and contract proposals contained

in a "Section 6 Notice", pending negotiations between a *carrier* and a *representative* of its employees. (P. A. 10; 102).

On November 2, 1959, Respondent issued to Petitioner's union a "Section 6 Notice" under the Railway Labor Act (P. A. 70-81); such stated in part as follows:

> "We hereby give notice, under our existing agreements and pursuant to the provisions of the Railway Labor Act, that effective January 1, 1960, we propose to revise and supplement such agreement or agreements in accordance with the proposal set forth in 'Attachment A' appended hereto. (P. A. 71.)
>
> "* * *. In accordance with the provisions of Section 6 of the Railway Labor Act, please acknowledge receipt of this notice and advise if the proposed time, date and place for holding the initial conference are agreeable to you. (P. A. 71.)
>
> "If an agreement is not reached in our conferences, we request that you join with representatives of the employees of other carriers * * * in the creation of an * * * National Conference Committee * * * to negotiate to a conclusion, in accordance with the provisions of the Railway Labor Act, the subject matters of this proposal." (P. A. 72.)

In "Attachment A" (P. A. 72-81) to said "Section 6 Notice" Respondent proposed to:

> "* * * eliminate all agreements, rules, regulations, interpretations, and practices, however established, * * *, which * * * (ii) provide for *arbitrary payments*, or special or *constructive allowances*, * * *. (P. A. 72.)
>
> * * * * *
>
> "* * * eliminate all agreements, rules, regulations, interpretations and practices, however established, * * * which (i) prohibit or impose restrictions on the right of the carrier to establish, move, consolidate, or abolish *crew terminals*, or merge or consolidate *seniority districts*, (ii) prohibit or impose restrictions on the establishment or operation of * * * *intradivisional*

or *intraseniority* district runs, (iii) prohibit or provide penalties for running crews through established crew terminals. * * *. (P. A. 77.)

* * * * *

"* * * Establish a rule to provide that 1. The carrier shall have the right to establish, move, consolidate and abolish *crew terminals*, to merge and consolidate *seniority districts* and to establish * * * *intradivisional* and *intraseniority* district runs in assigned and unassigned service with the right to operate any such run, * * * on either a one way or turnaround * * * basis, and through established *crew terminals* * * *. (P. A. 78.)

* * * * *

"* * * All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that existing rules and practices considered by the carrier to be more favorable are preserved." (P. A. 79.)

Thereafter, Petitioners and Respondent met and negotiated with respect to said "Section 6 Notice" and "Attachment A" appended thereto; the parties are still in the process of negotiating with respect thereto, and all the statutory procedural steps specifically outlined in Section 6 of the Railway Labor Act have not been complied with by Respondent even at this late date. (P. A. 12-13; 98; 102.)

While the parties were in the process of conferring and negotiating with respect to said "Section 6 Notice" of November 2, 1959, Respondent notified Petitioners on February 8, 1960, "that *through service* will be established between Indianapolis and Rose Lake (East St. Louis)"; on February 12, 1960, Respondent notified one of Petitioners that effective March 16, 1960, Respondent would abolish certain passenger assignments involving locomotive engineers, who had their Home Terminal at Terre Haute, and, that the East End Freight Pool and the West End

Freight Pool, involving locomotive engineers with their Home Terminal at Terre Haute, would likewise be abolished, together with certain extra crews, involving locomotive engineers, with their Home Terminal at Terre Haute; on March 7, 1960, and on March 10, 1960, various written Notices and Advertisement Bulletins were issued by Respondent to representatives of Petitioners to the effect that the East End and West End Freight Pools and Extra Pools with their Home Terminal at Terre Haute, and passenger engine crews, all involving locomotive engineers with their Home Terminal at Terre Haute, would be abolished; all of said Notices and Advertisement Bulletins pertained to the matters of *established terminals*, changing of *established terminals*, moving or abolishment of *crew terminals*, the *running of crews* through *established crew terminals*, and the establishment of *new intradivisional* or *intra-seniority* district runs (P. A. 14), and called for the abolishment of a minimum of some 70 jobs of locomotive engineers at Terre Haute (P. A. 93), all of which matters were involved in the proposals as contained in said "Section 6 Notice" as issued by Respondent on November 2, 1959. (P. A. 14.)

As a result of said Notices and Advertisement Bulletins as issued by Respondent to representatives of Petitioners in February and March of 1960, the Grand International Brotherhood of Locomotive Engineers conducted a *strike vote* on March 7, 1960, among the members of Division No. 25, *et al.*, who were employed by Respondent; said member-employees voted overwhelmingly to strike, but a *Notice to Strike* was never served upon Respondent, and said employees did not go out on strike. (P. A. 14-15.)

Without any previous negotiation or notice, the February and March 1960 Notices and Advertisement Bulletins were summarily cancelled by Respondent on March 11, 1960. (P. A. 101.)

Thereafter on April 18, 1960, Respondent issued and published certain *new* Notices and Advertisement Bulletins at Terre Haute to the locomotive engineers, the same to be effective just eight (8) days later at 12:01 P.M., April 26, 1960. (P. A. 15.)

Such *new* Notices, among other things, called for (a) *abolishment* of many *engine crews* involving locomotive engineers in both freight and passenger service, who had their Home Terminal at Terre Haute for many years last past; (b) *abolishment* of *intradivisional* district runs of locomotive engineers between Terre Haute and Indianapolis; (c) *abolishment* of *intradivisional* district runs of locomotive engineers between Terre Haute and East St. Louis; (d) *abolishment* of *constructive allowances* for *constructive miles* on *intradivisional* runs between Terre Haute and Indianapolis (P. A. 15-16, 95-97); (e) *abolishment* of all (1) Pool Freight Service, (2) Assigned Passenger Service, (3) Extra List of engineers with their Home Terminal at Terre Haute, as to passenger and freight service between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis, involving a minimum of some 70 locomotive engineers, who have had their Home Terminal at Terre Haute, and who have had their homes in Terre Haute or the immediate area thereof for many years last past. (P. A. 92-93.)

The *new* Advertisement Bulletins, among other things, called for (a) *moving* of the Home Terminal from Terre Haute to Indianapolis of many locomotive engineers, who had their Home Terminal at Terre Haute for many years last past; (b) *establishment* of a Home Terminal in Indianapolis for many locomotive engineers, who had their Home Terminal at Terre Haute for many years last past; (c) merging and *consolidation* of *intradivisional* district runs between Terre Haute and Indianapolis with *intradivisional* district runs between Terre Haute and East St. Louis,

thereby causing locomotive engineers to run through their long established Home Terminal at Terre Haute as well as to lose their long established *intradivisional seniority* rights to train runs between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis; (d) *establishment* of *new intradivisional* district runs between Indianapolis and East St. Louis, thereby causing locomotive engineers to run through their long established Home Terminal at Terre Haute, as well as lose their long established *intradivisional seniority* rights to train runs between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis; (e) establishment of *new intraseniority* district runs between Indianapolis and East St. Louis; (f) *establishment* of new *intraseniority* district runs between Indianapolis and East St. Louis, although Petitioners could not acquire *seniority* rights on said new *intraseniority* district runs between Ben Davis and Indianapolis; and, (g) *establishment* of new *intradivisional-intraseniority* district runs between Indianapolis and East St. Louis, thereby (1) *abolishing* and *eliminating* some 22 *constructive* miles and *constructive allowances* therefor on previously long established *intradivisional-intraseniority* district runs between Terre Haute and Indianapolis, and (2) *abolishing* and eliminating previously long established *arbitrary allowances* for petitioners working out of Terre Haute to Indianapolis and from Terre Haute to East St. Louis. (P. A. 15-16; 95-97.)

When Respondent issued the aforesaid Notices and Advertisement Bulletins in February and March of 1960, Petitioners, both orally and in writing, attempted to *raise* and *list* a dispute with respect thereto under an agreement between the parties (Appendix E attached to Affidavit of J. J. Maher; P. A. 67-69), but Respondent summarily, arbitrarily, and unilaterally took the position that there could be no dispute *raised* or *listed* as to such Notices and

Advertisement Bulletins, for according to Respondent, it had the *absolute* right to take such action exclusive of Petitioners, and that negotiation with respect thereto was not required under the Railway Labor Act. (P. A. 101.)

Petitioners also attempted to *raise* or *list* a dispute and voice disapproval of the arbitrary, unilateral and summary action by Respondent in the posting at Terre Haute of the aforesaid *new* Notices and Advertisement Bulletins on April 18, 1960, to take effect just eight days later on April 26, 1960, but Respondent steadfastly refused to recognize that any dispute could or did exist between Petitioners and Respondent, and refused to negotiate thereon. (P. A. 101-102.)

Petitioners made every effort to present a dispute to Respondent, but the railroad would not recognize that any dispute could exist, and refused to permit any dispute to be processed. (P. A. 102.)

Neither Petitioners nor Respondent has filed any dispute or claim concerning one another with the National Railroad Adjustment Board or the National Mediation Board with respect to the "Section 6 Notice" as issued by Respondent to Petitioners on November 2, 1959, or with respect to the Notices and Advertisement Bulletins as posted by Respondent on April 18, 1960. (P. A. 103.)

The "Section 6 Notice" of November 2, 1959, called (a) for the elimination of practically every agreement in effect between Petitioners and Respondent, and (b) the proposal of a new agreement or agreements with respect to any agreement or agreements then in effect between Respondent and Petitioners, as well as matters relating thereto.

The *new* Notices and Advertisement Bulletins of April 18, 1960, to take effect on April 26, 1960, involved many of the very same proposals submitted and contained in the "Section 6 Notice" of November 2, 1959.

In issuing and publishing the new Notices and Advertisement Bulletins of April 18, 1960, defendant disregarded completely the status quo provisions of Section 6 of the Railway Labor Act.

Proceedings in State Court.

Petitioners commenced this action on April 25, 1960, in the Superior Court of Marion County, Indiana, Room No. 3, under cause No. S 60-2808; the complaint prayed for a Restraining Order Without Notice, a Temporary and Permanent Injunction, damages, and primarily sought to enjoin Respondent from violating and disregarding the status quo provisions of the Railway Labor Act, by attempting to put in operation certain Notices and Advertisement Bulletins published April 18, 1960, and scheduled to take effect just eight (8) days thereafter at 12:01 on April 26, 1960. (P. A. 17.)

On April 25, 1960, the same day the complaint was filed, a hearing was conducted before the Judge of the Marion County Superior Court, Room No. 3, evidence was introduced under oath, and the State Court issued a Restraining Order Without Notice, therein enjoining Respondent from putting in effect said Notices and Advertisement Bulletins, and directing Respondent to appear in Court at 9:30 o'clock A. M. on April 29, 1960, on Petitioners' Application for Temporary Injunction. (P. A. 26-29.)

Basis for Federal Jurisdiction.

On April 28, 1960, Respondent filed a Petition to Remove the case to the United States District Court, and, among other things, alleged in said Petition as basis for removal, "that said Complaint is based upon an alleged violation of Section 6 of the Railway Labor Act." (P. A. 30-33.)

Proceedings in U. S. District Court.

On April 30, 1960, Petitioners served upon Respondent a Motion for Preliminary Injunction (P. A. 35-36) and a "Notice" (P. A. 34) that such motion would come on for hearing at 2:00 o'clock P. M. on Tuesday, May 3, 1960; on said latter date, a Pre-Trial Conference was conducted and as a result thereof, the parties agreed, among other things, (a) that the Restraining Order Without Notice could remain in full force and effect until hearing could be held on Petitioners' Motion for Preliminary Injunction and proper disposition made thereof by the Court, subject to the right of Respondent to move to dissolve the Restraining Order Without Notice, and, subject to the right of the Court to consider at any time the question of jurisdiction over the subject matter, and (b) that the Injunction Bond should remain in full force and effect; such agreement of the parties was spread of record by the Court in the form of an entry as of May 3, 1960. (P. A. 36-37.)

On June 10, 1960, Respondent filed a Motion to Dismiss or for Summary Judgment (P. A. 38) on the following grounds: (1) that the Court lacked jurisdiction over the subject matter, because the complaint was based on a dispute growing out of grievances or out of the interpretation or application of agreements entered into under the Railway Labor Act, which were within the exclusive jurisdiction of the National Railroad Adjustment Board; (2) that the complaint failed to state a claim against Respondent upon which relief could be granted, or in the alternative to grant summary judgment for Respondent on the ground that there was no genuine issue as to any material fact and that the Respondent was entitled to judgment as a matter of law; (3) that the Motion was based on (a) pleadings on file in the action, and (b) affidavit of J. J. Maher attached to the Motion as Exhibit No. 1. (P. A. 38-81.)

On July 5, 1960, Respondent filed a Supplemental Affidavit of J. J. Maher (P. A. 82-86) in support of its Motion to Dismiss or for Summary Judgment.

On July 15, 1960, Petitioners filed the Affidavit of William E. Hilbert in opposition to Respondent's Motion to Dismiss or for Summary Judgment. (P. A. 87-103.)

On September 14, 1960, the District Court sustained Respondents' Motion for Summary Judgment on the ground, that there was no genuine issue as to any material fact, that Respondent was entitled to judgment as a matter of law, and that said Motion was in all respects sustained. (P. A. 104-106.)

On September 15, 1960, the District Court found that the Respondent was entitled to a summary judgment as a matter of law, and rendered an order and decreed that Respondent's Motion for Summary Judgment be granted, that Petitioners have and recover nothing by their complaint, and that Respondent recover its costs. (P. A. 107.)

VI.

ARGUMENT.

A.

The *original* Notice (P. A. 70-81) as issued by Respondent to Petitioners on November 2, 1959, was definitely a so-called "Section 6 Notice," for it was so designated by Respondent; and such Notice, among other things, specifically sought:

(1) to *eliminate all agreements*, rules, regulations, interpretations and practices, however established,

(a) *providing for* arbitrary payments or constructive allowances,

(b) *restricting* Respondent in establishing, moving, consolidating or abolishing crew terminals, merging or consolidating seniority districts,

(c) *restricting* Respondent in establishing or operating intradivisional or intraseniority district runs,

(d) restricting Respondent from running crews through established crew terminals, and

(2) to *establish new rules* under which Respondent would have the right to establish, move, consolidate, and abolish crew terminals, to merge and consolidate seniority districts, and to establish intradivisional and intraseniority district runs through established crew terminals. (P. A. 72; 77-79; 97-98.)

Pursuant to the aforementioned "Section 6 Notice" of November 2, 1959, the parties met and conferred with

respect thereto, and are still in the process of negotiating as to such, as per the express statutory provisions of the Railway Labor Act, 45 U. S. C. Sec. 156.

Under such conditions, the Railway Labor Act clearly states that "rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon." (45 U. S. C. Sec. 156.)

However, while the parties were in the process of conferring and negotiating with respect to said "Section 6 Notice" of November 2, 1959, Respondent posted on February 12, 1960, at Terre Haute, Indiana, which had been a Home Terminal for 100 years last past, certain Notices and Advertisement Bulletins (P. A. 14), which were to take effect on March 10, 1960 and involved matters contained in said "Section 6 Notice" of November 2, 1959. (P. A. 14.) As a result of the Notices and Advertisement Bulletins posted on February 12, 1960, Petitioners conducted a "strike vote" on March 7, 1960, but a "Notice to Strike" was never served upon Respondent, and Petitioners did not go out on strike; on March 11, 1960, Respondent cancelled such Notices and Advertisement Bulletins as posted on February 12, 1960. (P. A. 14-15.)

Then on April 18, 1960, Respondent posted *new* Notices and Advertisement Bulletins at Terre Haute, the same to be effective just eight (8) days later on April 26, 1960 (P. A. 15), which involved some of the same and identical matters and proposals as submitted by Respondent to Petitioners in the "Section 6 Notice" of November 2, 1959 (P. A. 16; 98), such as, among other things, the following:

(a) *Abolishment* of *intradivisional* runs between Terre Haute and Indianapolis (P. A. 95);

(b) *Abolishment* of *intradivisional* runs between Terre Haute and East St. Louis (P. A. 96);

(c) *Abolishment* of "constructive allowances" for

"constructive miles" on *intradivisional* runs between Terre Haute and Indianapolis, in the establishment of *new intradivisional* runs between Indianapolis and East St. Louis (P. A. 96-7);

(d) *Abolishment* of "arbitrary payments" in effect at Terre Haute with respect to *intradivisional* runs between Terre Haute and Indianapolis, and between Terre Haute and East St. Louis, in the establishment of *new intradivisional* runs between Indianapolis and East St. Louis (P. A. 97);

(e) *Abolishment* of *intraseniority* rights to *intradivisional* runs between Terre Haute and Indianapolis (P. A. 93-4);

(f) *Abolishment* of *intraseniority* rights to *intradivisional* runs between Terre Haute and East St. Louis (P. A. 93-4);

(g) *Abolishment* of Terre Haute as the Home Terminal of approximately 70 locomotive engineers (P. A. 95), although for approximately 100 years last past, Respondent had recognized, accepted, and agreed to Terre Haute as a Home Terminal for those engineers working out of Terre Haute to Indianapolis and out of Terre Haute to East St. Louis (P. A. 91-2);

(h) *Abolishment* of a minimum of some 70 jobs at Terre Haute (P. A. 14; 92-3);

(i) *Merged* and *consolidated* the *intradivisional* runs between Terre Haute and Indianapolis with the *intradivisional* runs between Terre Haute and East St. Louis (P. A. 96), and, thereby caused Petitioners to *run through* their long established Home Terminal at Terre Haute (P. A. 96);

(j) *Established new intradivisional* and *intraseniority* runs between Indianapolis and East St. Louis, and caused engineers to *run through* their long established Home Terminal at Terre Haute (P. A. 96).

In its "Section 6 Notice" of November 2, 1959, Respondent sought, on a wholesale and complete scale, to eliminate all agreements with Petitioners and to negotiate new ones, and then shortly thereafter on April 18, 1960, set out to do some of the same things on a local basis at Terre Haute.

Respondent has never "withdrawn" or "dropped" its "Section 6 Notice" of November 2, 1959, and under the authority and reasoning in the case of *In re Hudson & Manhattan Railroad Company*, 172 F. Supp. 329, 267 F. 2d 941, cert. den., June 27, 1960, 363 U. S. 843, a *major dispute* is involved in this proceeding.

Respondent created a *major dispute* by the issuance of its "Section 6 Notice" on November 2, 1959, and by entering into negotiations with respect thereto gained for itself the protective provisions of the Railway Labor Act (45 U. S. C. Secs. 155 and 156); that is, Respondent effectively prevented Petitioners from exercising their right to strike; and, while Respondent was in such protective status under the Act, it then proceeded to forthwith *abolish* and *establish* in a particular town, such as Terre Haute, some of the very identical working conditions as to which Respondent was and is still negotiating with Petitioners under said "Section 6 Notice."

In other words, the question arises as to whether or not a railroad, such as Respondent, can issue an all-inclusive "Section 6 Notice" as to the complete elimination of all agreements and the proposed establishment of new ones with respect to its entire operation, and then shortly thereafter, arbitrarily and summarily abolish and establish some of the same identical working conditions at a particular place, in spite of the express language in the Act, that "In every case where such notice of intended change has been given, or conferences are being held with reference thereto, * * * rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy

has been finally acted upon, as required by Section 155 of this title, * * *." (45 U. S. C. Sec. 156.) This is an important federal question, which has not been resolved by this Court, and it is important that the same should be settled for the benefit of both labor and management in the railway industry.

Respondent has lived under the protection of the provisions of the Railway Labor Act and the extensive terms of a contract that has been effective, in many respects, since 1941.

Under the Railway Labor Act, Respondent took the initiative and perhaps the advantage to serve the "Section 6 Notice" of November 2, 1959, which necessarily involved a "major dispute," and under which "*rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon*" as required by Sections 155, 156 and 160 of the Act.

Nevertheless, in spite of the "Section 6 Notice," and regardless of the fact that the parties were still negotiating with respect thereto, Respondent issued the *new* Notices and Advertisement Bulletins of April 18, 1960, thereby altering *rules or working conditions*, in violation of the status quo provisions of the Railway Labor Act.

B.

When Respondent issued the Notices and Advertisement Bulletins on February 12, 1960, to take effect on March 10, 1960, Petitioner, both orally and in writing, attempted to *raise* and *list* a dispute with respect thereto under an agreement between the parties (Appendix E attached to affidavit of J. J. Maher; P. A. 67-69), but Respondent summarily, arbitrarily and unilaterally took the position that there could be no dispute *raised* or *listed* as to such Notices and Advertisement Bulletins, for according to

Respondent, it had the absolute right to take such action exclusive of Petitioners, and that negotiation with respect thereto was not required under the Railway Labor Act. (P. A. 101.)

Petitioners also attempted to *raise* and *list* a dispute and voice disapproval of the arbitrary, unilateral and summary action of Respondent in the posting at Terre Haute of the aforesaid *new* Notices and Advertisement Bulletins on April 18, 1960, to take effect just eight (8) days later, on April 26, 1961, but Respondent steadfastly refused to recognize that any dispute could or did exist, and Respondent refused to negotiate with Petitioners thereon (P. A. 101-2).

Petitioners made every effort to present a dispute to Respondent, but it would not recognize that any dispute could exist, and arbitrarily refused to permit any dispute to be processed. (P. A. 102.)

Petitioners sought injunctive relief from the District Court to prevent Respondent from violating the status quo provisions of the Railway Labor Act (45 U. S. C. Sec. 156); the District Court was authorized and empowered to grant injunctive relief to either party, including Petitioners, to vindicate the processes of the Railway Labor Act. *Brotherhood of Railroad Trainmen, etc., et al.* v. *Chicago River & Indiana Railroad Company, et al.* (1957), 353 U. S. 30-41-42, 77 S. Ct. 635, 1 L. ed. 2d 622-629-630.

In the case of *Chicago and North Western Railway Co.* v. *Order of Railroad Telegraphers, et al.* (C. A. 7, 1959), 264 F. 2d 254-257, it was noted that many jobs were abolished; with respect to such, this Court expressly stated that a dispute over the matter could not be classified as a minor dispute but involved a major dispute; and, in the case of *The Order of Railroad Telegraphers, et al.* v. *Chicago and North Western R. Co.* (April 18, 1960), 362 U. S. 330, 80 S. Ct. 761, 4 L. ed. 2d 774-783; Reh. Den. 362 U. S. 984,

80 S. Ct. 1056, 4 L. ed. 2d 1019, at page 341 of 362 U. S. 330, this Court stated the following:

> "Only a word need be said about the railroad's contention that the dispute here with the union was a minor one relating to an interpretation of its contract and therefore one that the Railway Labor Act required to be heard by the Railway Adjustment Board. We have held that a strike over a 'minor dispute' may be enjoined in order to enforce compliance with the Railway Labor Act's requirement that minor disputes be heard by the Adjustment Board. *Brotherhood of R. Trainmen* v. *Chicago River & I. R. Co.*, 353 U. S. 30, 1 L. ed. 2d 622, 77 S. Ct. 635. *But it is impossible to classify as a minor dispute this dispute relating to a major change, affecting jobs, in an existing collective bargaining agreement*, rather than to mere infractions or interpretations of the provisions of that agreement. * * *" (Our emphasis.)

In the instant case, as heretofore noted, the *new* Notices and Advertisement Bulletins as published on April 18, 1960, called for the abolishment of a minimum of some seventy (70) jobs of locomotive engineers at Terre Haute (P. A. 95); such apparently involved the loss of about as many jobs as in the case of *The Order of Railroad Telegraphers, et al.* v. *Chicago and North Western R. Co.*, 362 U. S. 330, 341, and as conspicuously stated therein by this Court, *it is impossible to classify such a major change affecting jobs, as a minor dispute;* with respect to such language, the Court of Appeals in the case at bar (290 F. 2d. 881-5) stated that "It would seem this use of the word 'major' is confusing as surely a major dispute does not depend upon the number of people involved."

This Court used the term *major* clearly to classify the loss of a good number of jobs; however, the Court of Appeals has now determined that the use of such word "major" is confusing and that this Court did not mean what it said.

The Supreme Court has decided such particular question, and it now appears that the Court of Appeals in the instant case has rendered a decision in conflict with an opinion of this Court; such a conflict should not be permitted to exist; it should now be specifically resolved, that this Court meant what it clearly stated in the use of the word *major*, and the opinion of the Court of Appeals should not be permitted to stand, wherein that court stated that the use of the word *major* is confusing.

It would appear that this is an important question that likewise should be decided and settled by this Court for the benefit of both management and labor in the railway industry.

C.

Assuming for the sake of argument, that both the District Court and the Court of Appeals in the instant case, were correct in holding, (a) that there was no connection or relationship between the "Section 6 Notice" of November 2, 1959, and the Notices and Advertisement Bulletins of April 18, 1960, and (b) that the April 18, 1960 Notices and Advertisement Bulletins involved only a minor dispute, nevertheless, the undisputed facts in this proceeding are:

(a) Respondent posted such Notices and Advertisement Bulletins on April 18, 1960, to take effect just eight (8) days later on April 26. (P. A. 15.)

(b) Upon the posting of such Notices and Advertisement Bulletins on April 18, 1960, Petitioners attempted to *raise* and *list* a dispute and voice disapproval of the arbitrary, unilateral and summary action of Respondent. (P. A. 101-2.)

(c) Respondent summarily and arbitrarily refused to recognize that any dispute could or did exist with respect to such Notices and Advertisement Bulletins,

and Respondent refused to negotiate thereon with Petitioners. (P. A. 101-2.)

(d) Petitioners made every effort to present a dispute to Respondent, but Respondent would not recognize that any dispute could or did exist, and refused to permit any dispute to be processed. (P. A. 102.)

Such action on the part of the Respondent was clearly in violation of the Act; it was even so stated by the Court of Appeals in the instant case (290 F. 2d. 881), at page 884, wherein the court pointed out that there are two classes of dispute recognized under the Act; as to such, it was stated "The Act marks out two distinct routes for settlement of the two classes of dispute. As to both, the Act *requires the parties enter into negotiations* as the first step towards settlement of the controversy (Sec. 2, Second, 45 U. S. C., (a) Section 152, Second." (Our emphasis.)

Needless to say, as heretofore mentioned, Respondent steadfastly and in an arbitrary and summary fashion refused to negotiate in accordance with the express provisions of the Act and the decided cases thereunder.

Therefore, Petitioners were entitled to seek injunctive relief in the District Court to maintain the status quo provisions of the Act; as was stated in the case of *Louisville & Nashville Railroad Company* v. *Brown, et al.* (C. A. 5, 1958), 252 F. 2d. 149, at page 153 "The statute *requires* that disputes be processed by normal grievance procedures, but if no agreement is reached, then either party may refer the dispute to the Adjustment Board." (Court's emphasis.)

Therefore, at least it appears to be well settled under the provisions of the Act and the judicial decisions thereunder, that disputes *must* be processed by normal grievance procedures.

Of course, the District Court and the Court of Appeals

pointed out that the dispute between the parties in the case at bar had not been submitted to the Adjustment Board; this appeared to be all important to said courts in denying Petitioners any relief.

And, in the process, the Court of Appeals particularly made reference to the case of *Manion, et al.* v. *Kansas City Terminal Railway Co.* (1957), 353 U. S. 927; 77 S. Ct. 706; 1 L. ed. 2d 722, and proceeded to state that this Court "vacated an injunction granted by an order of court in a minor dispute because the dispute was not pending before the Adjustment Board. We think the decision in *Manion* means that a court should not permit the use of its injunctive powers in cases involving minor disputes where such disputes could have been submitted to the Adjustment Board."

However, the above quotation from the opinion of the Court of Appeals does not appear to be a correct and fair statement as to the law in the *Manion* case; and, as a basis for this statement, Petitioners refer the Court to the case of *Louisville & Nashville Railroad Company* v. *Brown, et al.* (C. A. 5, 1958), 252 F. 2d. 149; at this particular point and before particular reference is made to the language in the above case, Petitioners would again point out that the Notices and Advertisement Bulletins as posted on April 18, 1960, were to take effect just eight (8) days thereafter on April 26, 1960; as to such particular fact, as well as to the obligation of Respondent to negotiate concerning said Notices and Advertisement Bulletins under the express provisions of the Act, and as to the meaning of the opinion of this Court in the *Manion* case, Petitioners substantiate and sustain their position by the clear and forceful language of the Court in the case of *Louisville & Nashville Railroad Company* v. *Brown, et al.* (C. A. 5, 1958), 252 F. 2d. 149, wherein the court stated on page 153:

"* * *. Here there was no issue pending before the board, because the issue was not ripe for presentation to it. The statute *requires* that disputes be processed by normal grievance procedures, but if no agreement is reached, then either party may refer the dispute to the adjustment Board. * * *." (Court's emphasis.)

and again at page 154, as follows:

"What we have said here does not run counter to the Court's per curiam disposition of the *Manion* case (353 U. S. 927, 77 S. Ct. 706). There the state court had granted an injunction to prevent a strike *after* the grievance procedures had been completed and after more than six months had elapsed, during which time *either* party to the dispute could have referred the matter to the Board. The court reversed the judgment of the state court of appeals affirming the grant of the injunction, 'because the dispute here is not pending before the National Railroad Adjustment Board,' but in remanding the cause the court did so 'without prejudice to the power of the Court of Appeals *to reinstate* its judgment if the dispute is submitted to the Adjustment Board by either party within a reasonable time.' (Court's emphasis.)

"In the case before us neither party *could* submit the dispute to the Adjustment Board at the time of the alleged strike; thus there was no way in which the appellant here could protect its right to a board Adjudication. In Manion all the railroad company had to do on remand, in order to be entitled to a renewal of the injunction, was to submit the dispute to the Board, because all presubmission proceedings had been completed. *Here the dispute was only a few days old when the work stoppage occurred and neither party could go to the board.* (Our emphasis.) We think that in that posture of affairs the principle of Chicago River would apply, and that had an injunction been sought because the strike was illegal, it would lie to prevent the frustration of the statutory grievance-adjustment procedure." (Court's emphasis.)

In the instant case, Respondent posted the Notices and Advertisement Bulletins, and directed that they would take effect just eight (8) days thereafter; Petitioners attempted to present a dispute as to such; Respondent summarily and arbitrarily denied that a dispute could exist, and refused to negotiate thereon; such was a violation of the Act on the part of the Respondent; Petitioners could not go to the Adjustment Board, "because the issue was not ripe for presentation to it." (252 F. 2d. 149-153.)

"Here the dispute was only a few days old when" the *radical changes* in conditions of employment, *loss* of numerous jobs, etc., were to take place at Terre Haute, "and neither party could go to the Board". (252 F. 2d. 149-154.)

All that Petitioners sought in the District Court was injunctive relief "to prevent the frustration of the statutory grievance-adjustment procedure". (252 F. 2d. 149-154.)

The nature of the rights of Petitioners is such that unless they are protected before the *drastic changes* take place, no adequate future remedy can be provided them. (363 U. S. 528-534.)

No agency under the Railway Labor Act is empowered to give injunctive relief tantamount to that which may be ordered by a District Court in imposing reasonable *status quo* provisions. (363 U. S. 528-534.)

However, this Court has decided on many occasions that injunctive relief may be granted to vindicate the processes of the Railway Labor Act, and that a District Court has the jurisdiction and power to issue necessary injunctive orders to enforce compliance with the requirements of the Railway Labor Act, notwithstanding the provisions of the Norris-LaGuardia Act. *Brotherhood of Railroad Trainmen, etc., et al. v. Chicago River and Indiana Railroad Company, et al.* (1957), 353 U. S. 30-41-42; 77 S. Ct. 635; 1 L. ed. 2d 622-29-30.

Apparently, this Court is familiar with the "long-delayed decisions" (363 U. S. 528-534) of the Railroad Adjustment Board; such seems to be a matter of common knowledge in the railroad industry as well as to this Court. (363 U. S. 528-534.)

A decision by the Railroad Adjustment Board under the Railway Labor Act in favor of petitioners, several years after the arbitrary and summary changes have been put in effect by Respondent, and the hardships and inconveniences experienced by Petitioners, would indeed be "but an empty victory". (363 U. S. 528-534.)

At such time, it would be manifestly impossible for Petitioners, through negotiation, to correct hardships already endured, nor would payments of money by Respondent to Petitioners be adequate compensation. Monetary benefits would not make up for the objectionable changes in working conditions, loss of runs, loss of many jobs, loss of seniority rights, etc. suffered by Petitioners for several years, and perhaps forever. Petitioners could not be adequately compensated, for the several years that they undoubtedly would be prevented from working at their place of residence and at their long established Home Terminal of Terre Haute. (363 U. S. 528-534.)

It is now decided, that even in a situation involving a "minor dispute", if a union and its members should strike, pending the adjudication of such a dispute before the National Railroad Adjustment Board, a carrier may obtain injunctive relief, *but in the process*, the District Court may condition the injunctive relief upon the carrier maintaining the *status quo*. *Brotherhood of Locomotive Engineers, et al.* v. *Missouri-Kansas-Texas Railroad Company, et al.* (1960) 363 U. S. 528; 80 S. Ct. 1326; 4 L. ed. 2d 1379.

It should make no difference in the Federal Courts, in proceedings involving judicial interpretation of the Rail-

way Labor Act, as to whom might be the plaintiff or defendant; or to be more specific, it should make no difference under the law, in so far as the Railway Labor Act is concerned, as to whether a railroad or a union comes into court as a plaintiff; the law should be equal to all, and discriminatory as to none.

If a railroad is entitled to enjoin *self-help* (252 F. 2d 149-153) in the form of a strike on the part of union, wherein a minor dispute is involved, then a union should be permitted into the same court and obtain similar injunctive relief, where a minor dispute is involved, if a railroad has violated the statutory provisions of the Act, as flagrantly done by the Respondent in this case.

This is likewise an important federal question which has not been settled, but which should undoubtedly be resolved by this court.

In the *Missouri-Kansas-Texas* case, *supra* (1960), 363 U. S. 528, the Court conspicuously stated at "footnote 3" therein, that it had not held in the *Chicago-River* case, *supra* (1957), 353 U. S. 30, nor was it decided in the said Missouri-Kansas-Texas case "whether a federal court can, during the pendency of a dispute before the Board, enjoin a carrier from effectuating the changes which gave rise to and constitute the subject matter of the dispute, independently of any suit by the railroad for equitable relief. * * *" (363 U. S. 528-531.)

In the instant case, Petitioners are seeking such relief; Petitioners are now seeking to have that particular question answered and resolved by this Court. This is indeed an important federal question, which has not been settled, but should be resolved by the Court for the benefit of both management and labor in the railway industry.

Surely, a railroad should not be entitled to any more relief under the Railway Labor Act, than a union and

its members; if a railroad is entitled to injunctive relief, then a *fortiori*, a union should likewise be entitled to injunctive relief, especially in a situation as in the case at bar, wherein the railroad on *short* notice arbitrarily determined that many jobs were to be abolished, many long existent conditions of employment were to be changed, that new jobs were to be created, new working conditions were to be established, and, in violation of the Railway Labor Act, *Respondent refused to negotiate with respect thereto.*

If injunctive relief can not be granted to Petitioners in the case at bar, it might just as well be stated as a matter of law, that in order for a union to obtain relief comparable to that which can be secured by a railroad under the Railway Labor Act, a union must perforce go on strike, thereby requiring the carrier to seek injunctive relief, and in the process the union is required to *beseech* the court *to condition* the injunction upon maintenance of the *status quo.*

Petitioners do not believe the law to be so harsh or unfair; in the past, injunctive relief has been granted to both carriers and unions to vindicate the processes of the Railway Labor Act; injunctive relief is proper and imperative in the instant case to enforce compliance with the requirements of the Act.

E.

In the Entry for September 14, 1960 (P. A. 104), in which Respondent's Motion For Summary Judgment was sustained, it appears to be conspicuously pointed out by the District Court that Petitioners sought by their action to have Respondent *permanently* enjoined from putting in effect or enforcing in any way the Notices and Advertisement Bulletins dated and published April 18, 1960. (P. A. 105.)

The District Court seems to imply or infer that Petitioners could not seek or obtain permanent injunctive relief, for in doing so, the District Court would be called upon to render a final judgment on the merits of a dispute, which perhaps should be resolved by some agency under the Railway Labor Act.

The mere fact, that Petitioners sought a permanent injunction did not warrant the District Court in concluding that Petitioners prayed for a final judgment that could not be thereafter modified or even dissolved, depending upon subsequent developments or circumstances.

However, this Court has decided on various occasions that an injunction is *permanent* only for the temporary period for which it may last; familiar equity procedure assures opportunity for modifying or vacating an injunction when its continuance is no longer warranted. *Milk Wagon Drivers Union of Chicago, Local 753, et al.* v. *Meadowmoor Dairies, Inc.* (1941), 312 U. S. 287-298-299 61 S. Ct. 552; 85 L. Ed. 836-844; *System Federation No. 91 Railway Employee's Department, AFL-CIO, et al.* v. *Wright, et al.* (1961), 364 U. S. 642; 5 L. Ed. 2d 349.

CONCLUSION.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX "A".

OPINION OF COURT OF APPEALS.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

September Term 1960—April Session 1961.

No. 13203.

WILLIAM E. HILBERT, JOSEPH MAUER, C. W. CURTIS and HARRY M. HOWELL, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,

Plaintiffs-Appellants,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,

Defendant-Appellee.

} Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

May 29, 1961.

Before HASTINGS, *Chief Judge*, DUFFY, *Circuit Judge* and MERCER, *District Judge*.

DUFFY, *Circuit Judge.* This suit was brought primarily to enjoin defendant railroad company from putting into effect certain Notices and Advertisement Bulletins dated April 18, 1960, which were to become effective April 26, 1960. Had the Notices and Advertisement Bulletins been carried out, it would have resulted in a reassignment of engineers from defendant's terminal at Terre Haute, Indiana, to defendant's terminal at Indianapolis, Indiana. Both terminals are now and were then established terminals for road train and engine crews.

Defendant filed a motion to dismiss or for summary judgment. Holding there were no genuine issues as to any material facts, the Court granted defendant's motion for summary judgment.

This suit was commenced in an Indiana State Court on April 25, 1960. On the same day, that Court issued a restraining order without notice enjoining defendant from putting into effect the Notices and the Advertisement Bulletins hereinbefore described. Thereafter, the suit was removed to the United States District Court.

The individual plaintiffs are members of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers, the latter being a national or international labor organization. The complaint alleged that for approximately one hundred years last past there has been a home terminal for engine crews of defendant's road at Terre Haute, Indiana, as follows: a) pool freight engine crews operating between Terre Haute and Indianapolis; b) pool freight engine crews operating between Terre Haute and East St. Louis; c) regularly assigned and extra passenger service locomotive engineers operating between Terre Haute and Indianapolis and between Terre Haute and East St. Louis, and an extra list of locomotive engineers with their Home Terminal at Terre Haute servicing locomotive engineers in categories (a), (b) and (c).

Under existing agreements reached by collective bargaining, engineers in freight and passenger service generally are paid a fixed amount per mile of their individual runs. They receive, however, a minimum allowance known as a basic day, equivalent to the payment for one hundred miles. The distance from Terre Haute to Indianapolis is 78 miles. The engineers on this run have been paid on the basis of 100 miles although they actually had run 78 miles. The payment for the 22 miles' difference is referred to as a constructive allowance.

Defendant determined that by arranging its freight and passenger service between Indianapolis and East St. Louis to be operated by engineers having their home terminal at Indianapolis, payment for the 22 miles not actually run would be eliminated. Also, a stop at Terre Haute for the purpose of changing engine crews would no longer be necessary. Defendant proceeded to abolish the pools and extra lists at Terre Haute, and new runs were advertised covering the home terminal at Indianapolis to perform the same service. No prior consultation was had with the representatives of the engineers, defendant claiming that same was not necessary, and asserting that on numerous occasions in the past, such changes have been made under the existing agreement without prior negotiation.

Plaintiffs point out that Division No. 25 is composed primarily of locomotive engineers who reside in Terre Haute or the immediate vicinity thereof, and that Indianapolis has not been a home terminal for them. In addition to the great inconvenience of finding new homes in Indianapolis and the loss of "constructive allowances" they claim their seniority rights would also be affected.

One of the many regulations in effect for many years between the union and defendant reads: "5-P-1. Established terminals will not be changed nor new terminals

created except by agreement between the interested local chairman and the Superintendent."

No attempt was made by plaintiffs to submit the present dispute under existing grievance procedures although the District Court found they had a right to do so.

On November 2, 1959, prior to the present dispute, the defendant served on all the organizations representing its employees, a notice under section 6 of the Railway Labor Act proposing a general revision of the collective bargaining agreements covering the defendant's employees. This notice was served as part of a national movement by substantially all the Class I carriers in the United States. These proposals are currently before a presidential commission.

The big issue in this suit is whether a major dispute or a minor dispute is involved. Plaintiffs insist the action of defendant in changing working conditions which had long been in existence, and creating new conditions of employment, created a major dispute; that it violated the *status quo* provisions of the Railway Labor Act and should have been enjoined by the District Court.

Section 2 of the Railway Labor Act (45 U. S. C. § 151(a)) states as among the five general purposes of the Act:

> "(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

These two classes of disputes are clearly distinguished. In general, the difference is between what are regarded traditionally as major and minor disputes in the railway labor field.

"Major disputes" encompass those differences arising out of proposals for new contracts or of changes in existing contractual or legal obligations and relations. They arise where there is no collective bargaining agreement or where it is sought to change the terms of one. In such a case, the issue cannot be resolved by reference to an existing agreement.

"Minor disputes", on the other hand, are grievances or other differences arising out of the application or interpretation of an existing collective bargaining agreement. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation. See *Elgin, J. & E. Ry. v. Burley*, 325 U. S. 711, 722.

The Act marks out two distinct routes for settlement of the two classes of disputes. As to both, the Act requires the parties enter into negotiations as the first step towards settlement of the controversy (§ 2, Second, 45 U. S. C. § 152, Second). Beyond this initial stage the procedures diverge. Major disputes go first to mediation (§ 5, First, 45 U. S. C. § 155, First); if that fails, to acceptance or rejection of arbitration (§ 5, First, 45 U. S. C. § 155, First); and finally to possible presidential intervention (§ 10, 45 U. S. C. § 160). If all this fails, compulsory processes are at an end, and either party may resort to self help. No authority is empowered to decide the dispute unless the parties agree to arbitration.

In minor disputes, if negotiation fails, either party may submit the controversy to the National Railroad Adjustment Board (§ 3, First (i), 45 U. S. C. § 153, First (i)). The awards of the Board are final and binding on the parties (§ 3, First (m), 45 U. S. C. § 153, First (m)). This is a form of compulsory arbitration.

Generally, the Norris-LaGuardia Act prohibits the issuance of an injunction in cases involving any "labor dis-

pute" (29 U. S. C. § 104). In *Order of Railroad Telegraphers* v. *Chicago & No. W. Ry.*, 362 U. S. 330, the Court held the Norris-LaGuardia Act prevented the issuance of an injunction to enjoin a strike in a railway labor case involving a major dispute. However, in *Brotherhood of Railroad Trainmen* v. *Chicago River & Ind. R. R.*, 353 U. S. 30, a case involving a minor dispute, the Court stated that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. The Court said, page 40: "There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved."

The two cases last cited each involved an attempt to enjoin a threatened or actual strike. In the case at bar, we deal with the reverse situation. Here, the plaintiffs brought suit to require the railroad to maintain the *status quo* pending settlement of the dispute.

Nothing in the Norris-LaGuardia Act prevents a federal court from granting an injunction to require an employer to retain the *status quo*. However, there is nothing in the Railway Labor Act that imposes such an obligation on the railroad in the case of a minor dispute. The *status quo* provisions of the Act are found only in the sections dealing with major disputes.

In *Order of Railway Conductors* v. *Pitney*, 326 U. S. 561, the union sought an injunction to prevent the replacement of some of its members. It was alleged this was a violation of an existing collective bargaining contract and, therefore, a violation of section 6 of the Railway Labor Act. The Supreme Court held that an injunction should not issue to prevent the proposed action since the question of whether the contract was violated was referable to the Adjustment Board. Justice Rutledge dissented and argued the railroad should have been required to maintain the *status quo*. The majority rejected this contention.

In a footnote in the *Chicago River* case, 353 U. S., at page 42, the Court said: "The Norris-LaGuardia Act has been held to prevent the issuance of an injunction in a railway labor case involving a 'major dispute'. *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50. In such a case, of course, the Railway Labor Act does not provide a process for a final decision like that of the Adjustment Board in a 'minor dispute' case."

Another informative footnote appears in *Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas R. R.*, 363 U. S. 528, 531: "We did not decide in *Chicago River*, and we do not decide here, whether a federal court can, during the pendency of a dispute before the Board, enjoin a carrier from effectuating the changes which gave rise to and constitute the subject matter of the dispute, independently of any suit by the railroad for equitable relief. As we read the order of the District Court, this case does not involve independent relief for the union."

In the case at bar, the plaintiffs do seek independent relief in the event that we should hold that this case presents a minor dispute.

In contending that this case involves a major dispute, plaintiffs rely principally upon the section 6 notice issued by the defendant railroad on November 2, 1959. Both parties agree this notice created a major dispute. From this, plaintiffs contend that the notices of April 18, 1960, and the actions taken pursuant thereto, which are the center of the controversy in this case, involve some of the same proposals covered by the November 2, 1959 notice and, therefore, violated the *status quo* provisions of section 6 of the Act.

A case, in many respects similar to the one here under consideration, is *Rutland Ry.* v. *Brotherhood of Locomotive Engineers* (D. C. Vt.), 188 F. Supp. 721. There, as

here, the railroad served the same November 2, 1959 notice on the union. The railroad then posted notices abolishing certain existing trains and creating new runs. In an action to enjoin a strike, the Court held the question whether the railroad had unilateral power to abolish and establish train runs which resulted in a reduction in work force, and the movement of a terminal for going on and off duty, was a minor dispute. The Court also held the fact that the carrier gave a section 6 notice to the operating Brotherhoods on November 2, 1959, did not extinguish the underlying minor dispute or preclude submission to the Adjustment Board.

We agree with the District Court that the section 6 notice of November 2, 1959 is not involved in this case. The dispute here relates to the meaning of Regulation 5-P-1. That rule remains in effect. The railroad contends that under its existing collective bargaining agreement, it has the unilateral authority to transfer crews between established terminals. The plaintiffs argue the contract gives no such authority, and that Regulation 5-P-1 would be violated if the railroad carried out its announced program. It is obvious this dispute involves a conflict over the interpretation or application of the provisions of the existing contract. We hold that a minor dispute is presented.

We have considered the case of *Order of Railroad Telegraphers* v. *Chicago & No. W. Ry.*, 362 U. S. 330, upon which plaintiffs strongly rely. On page 341, the Court refers to a dispute "* * * relating to a major change. * * *" It would seem this use of the word "major" is confusing as surely a major dispute does not depend on the number of people involved. In any event, we do not understand the Court in *Telegraphers* has, by the language used in that opinion, modified the rule it followed in previous decisions.

An additional point should be mentioned, although neither side relies heavily upon it – the dispute has not been submitted to the Adjustment Board. The District Court found that either party had a right to submit same, but the plaintiffs sought an injunction thereby avoiding the grievance procedures of the contract and the Act.

In *Manion* v. *Kansas City Terminal Ry.*, 353 U. S. 927, the Court, in a *per curiam* opinion, vacated an injunction granted by a state court in a minor dispute because the dispute was not pending before the Adjustment Board. We think the decision in *Manion* means that a court should not permit the use of its injunctive powers in cases involving minor disputes where such disputes could have been submitted to the Adjustment Board.

The District Court did not err in refusing to grant the injunction as requested by plaintiffs.

The judgment of the District Court is

AFFIRMED.

APPENDIX "B".

JUDGMENT OF COURT OF APPEALS.

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

Chicago 10, Illinois

Monday, May 29, 1961

Before

Hon. John S. Hastings, Chief Judge.
Hon. F. Ryan Duffy, Circuit Judge.
Hon. Frederick O. Mercer, District Judge.

WILLIAM E. HILBERT, *et al.*, etc., *Plaintiffs-Appellants.* vs. THE PENNSYLVANIA RAILROAD COMPANY, *Defendant-Appellee.*	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 13203	

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX "C".

ENTRY OF U. S. DISTRICT COURT ON MOTION FOR SUMMARY JUDGMENT.

In the United States District Court

For the Southern District of Indiana,

Indianapolis Division.

Civil Action
No. IP 60-C-123.

William E. Hilbert, Joseph Maner, C. W. Curtis, and Harry M. Howell, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,

Plaintiffs,

vs.

The Pennsylvania Railroad Company,

Defendant.

ENTRY.

This cause having come on to be heard on defendant's "Motion to Dismiss or for Summary Judgment", defendant moving therein (1) to dismiss the action on the ground

that the court lacks jurisdiction over the subject matter, and (2) to dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted, or in the alternative, to grant summary judgment for defendant on the ground that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law.

The dispute of the parties pending with the National Mediation Board pursuant to the November 2, 1959 notice of intended contract changes is in no way involved in the action before this court. The defendant under the facts has not altered plaintiffs' rates of pay, rules, or working conditions within the meaning of Section 6 of the Railway Labor Act (45 U. S. C. A., Section 156).

The defendant during the pendency of the said dispute before the Mediation Board was obligated to transact its relations with plaintiffs under the terms of their mutual contract effected March 1, 1941. In keeping with the provisions of that contract, defendant issued the notice of April 18, 1960 which precipitates a dispute between them as defined in Section 3 (i) of the Railway Labor Act (45 U. S. C. A., Section 153 (i)). This dispute has not been processed between the parties or submitted to the Railroad Adjustment Board pursuant to the contract or the Railway Labor Act. Neither of the parties have taken any steps toward settlement of this dispute before or since the filing of this injunction action.

The mere pendency of the "major dispute" before the Mediation Board and the existence of an unrelated "minor dispute" does not create a "major dispute" of the "minor dispute".

This court has no jurisdiction to decide the merits of dispute as such is the function of the National Railroad Adjustment Board and the defined process in the contract between the parties.

It is not a case for mandating the defendant to proceed to process the dispute under the contract's grievance procedure for the plaintiffs have that right themselves.

The plaintiffs have never proceeded to process the dispute and at this date have relied upon a restraining order since filing the suit and ultimately seek a permanent injunction and thereby avoiding the grievance procedure of the contract and the National Railroad Adjustment Board. The plaintiffs seek by their action to have the court permanently enjoin defendant from putting in effect or enforcing in any way, the "Notices" and "Advertising Bulletins" dated and published April 18, 1960 and scheduled to take effect at 12:01 P.M., April 26, 1960; also, that plaintiffs be awarded damages against defendant in the amount of Five Hundred Thousand Dollars ($500,000.00) and all other and further relief to which they may be entitled in the premises.

Now, on considering the verified complaint, the affidavits filed by the parties, having examined the briefs submitted after hearing argument of counsel, and due deliberation having been had thereon, it is

Ordered, that the defendant's motion for summary judgment on the ground that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law, be and the same is hereby in all respects sustained.

Dated this 14th day of September, 1960.

CALE J. HOLDER,
Judge, United States District Court
Southern District of Indiana.

APPENDIX "D".

JUDGMENT OF U. S. DISTRICT COURT.

In the United States District Court
For the Southern District of Indiana,
Indianapolis Division.

Civil Action
No. IP 60-C-123.

William E. Hilbert, Joseph Mauer, C. W. Curtis, and Harry M. Howell, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,

Plaintiffs,

vs.

The Pennsylvania Railroad Company,

Defendant.

The motion of the defendant for summary judgment pursuant to Rule 56(c) of the Rules of Civil Procedure, having been presented, and the Court being fully advised,

The Court finds that the defendant is entitled to a summary judgment as a matter of law.

It is therefore Ordered, Adjudged and Decreed that the defendant's motion for summary judgment be, and the same hereby is granted, that the plaintiffs have and recover nothing by their suit, and that the defendant recover its costs.

CALE J. HOLDER,
United States District Judge.

APPENDIX "E".

PERTINENT PROVISIONS OF RAILWAY LABOR ACT.

Sec. 1, First, Second, Third, Fifth, and Sixth (45 U. S. C. Sec. 151):

> First. The term "carrier" includes any express company, sleeping-car company carrier by railroad, * * *.
>
> Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.
>
> Third. The term "Mediation Board" means the National Mediation Board created by this chapter.
>
> * * * * *
>
> Fifth. The term "employee" as used herein includes every person in the service of a carrier * * *.
>
> Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.
>
> * * * * *
>
> This chapter may be cited as the "Railway Labor Act." May 20, 1926, c. 347, Sec. 1, 44 Stat. 577; June 7, 1934, c. 426, 48 Stat. 926; June 21, 1934, c. 691, Sec. 1, 48 Stat. 1185; June 25, 1936, c. 804, 49 Stat. 1921; Aug. 13, 1940, c. 664, Secs. 2, 3, 54 Stat. 785, 786; June 25, 1948, c. 646, Sec. 32 (a), (b), 62 Stat. 991; May 24, 1949, c. 139, sec. 127, 63 Stat. 107 (45 U. S. C. Sec. 151).

Sec. 2, (1)(4) and (5), (45 U. S. C. Sec. 151(a)):

> The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * *; (4) to provide for the

prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. May 20, 1926, c. 347, Sec. 2, 44 Stat. 577; June 21, 1934, c. 691, Sec. 2, 48 Stat. 1186. (45 U. S. C. Sec. 151(a).)

Sec. 2. First, Second, Sixth, and Seventh (45 U. S. C. Sec. 152):

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

* * * * *

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated con-

ferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

* * * * *

May 20, 1926, c. 347, Sec. 2, 44 Stat. 577; June 21, 1934, c. 691, Sec. 2, 48 Stat. 1186; June 25, 1948, c. 646, Sec. 1, 62 Stat. 909; Jan. 10, 1951, c. 1220, 64 Stat. 1238. (45 U. S. C. Sec. 152, First, Second, Sixth, and Seventh.)

Sec. 3, First, (i) (m), (45 U. S. C. Sec. 153, First, (i)(m)):

First. There is established a Board, to be known as the "National Railroad Adjustment Board," * * *.

* * * * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

* * * * *

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

* * * * * *

May 20, 1926, c. 347, Sec. 3, 44 Stat. 578; June 21, 1934, c. 691, Sec. 3, 48 Stat. 1189. (45 U. S. C. Sec. 153, First, (i) (m).)

Sec. 5, First, (a)(b), (45 U. S. C. Sec. 155, First, (a)(b)):

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of

this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

* * * * *

May 20, 1926, c. 347, Sec. 5, 44 Stat. 580; June 21, 1934, c. 691, Sec. 5, 48 Stat. 1195; June 25, 1948, c. 646, Sec. 32(a), 62 Stat. 991; May 24, 1949, c. 139, Sec. 127, 63 Stat. 107. (45 U. S. C. Sec. 155, First, (a)(b).)

Sec. 6, (45 U. S. C. Sec. 156):

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services

of the Mediation Board. May 20, 1926, c. 347, Sec. 6, 44 Stat. 582; June 21, 1934, c. 691, Sec. 6, 48 Stat. 1197. (45 U. S. C. Sec. 156.)

Sec. 10, (45 U. S. C. Sec. 160):

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. * * *. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

. . . . . .

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose. May 20, 1926, c. 347, Sec. 10, 44 Stat. 586; June 21, 1934, c. 691, Sec. 7, 48 Stat. 1197. (45 U. S. C. Sec. 160.)

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961 No. 353

WILLIAM E. HILBERT, JOSEPH MAUER, C. W. CURTIS and HARRY M. HOWELL, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,

Petitioners,

v.

THE PENNSYLVANIA RAILROAD COMPANY,

Respondents.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA

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Order of Railroad Telegraphers, *et al. v.* Chicago and Northwestern Ry. Co., 362 U.S. 330, 80 S. Ct. 761 (1960), rehearing denied 362 U.S. 984 .....7, 14, 15, 16

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961 — No. 353

WILLIAM E. HILBERT, JOSEPH MAUER, C. W. CURTIS and HARRY M. HOWELL, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,
Petitioners,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Respondents.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

QUESTIONS PRESENTED.

1. Whether the courts below erred in holding that the present case involves a dispute growing out of the interpretation or application of a railroad collectively bargained agreement, and is therefore a minor dispute as that term has been used in applying the Railway Labor Act.

2. Whether the courts below erred in holding that in a minor dispute there is no obligation imposed on carriers by the Railway Labor Act to refrain from taking an action challenged as an alleged violation of a collective agreement.

3. Whether the courts below erred in holding that the service by Respondent on the Brotherhood of Locomotive Engineers of a certain notice dated November 2, 1959, under Section 6 of the Railway Labor Act bore no relation to the minor dispute which arose in April 1960, and in holding that no statutory obligation arising from the service of such notice was violated in the present dispute.

4. Whether the courts below erred in holding that in the absence of such a statutory obligation under the Railway Labor Act there is no basis for the issuance of an injunction to restrain action by a carrier which has been challenged as a violation of existing collective agreements.

II.

STATEMENT OF THE CASE.

Facts.

Prior to the time the dispute involved in this case arose, Respondent operated certain passenger and freight services in the territory between Indianapolis, Indiana and East St. Louis, Illinois by the use of train crews, including engineers, assigned with their home terminal at Terre Haute, Indiana, which lies between Indianapolis and East St. Louis on Respondent's line of railroad. Freight service from Terre Haute eastward to Indianapolis and westward to East St. Louis was performed by "pools" consisting of a number of engineers and other train service personnel. Regularly scheduled passenger

service was performed in a similar manner so far as the home terminal was concerned. (P.A. 13.)[1]

Indianapolis has for many years been an established home terminal for road, train and engine crews as has Terre Haute. (Affidavit of J. J. Maher, par. 4; P.A. 39.)

Under existing collectively bargained agreements engineers in freight and passenger service are generally paid on a mileage basis, *i.e.*, at a fixed amount per mile of their individual runs. However, they receive a minimum allowance, generally referred to as a basic day, equivalent to the payment for 100 miles. The distance between Terre Haute and Indianapolis is approximately 78 miles. Engineers assigned to the eastward pool when they made a run between these two points were accordingly entitled to a payment of 100 miles even though they had actually run only 78.

Respondent determined that by arranging its freight and passenger service between Indianapolis and East St. Louis to be operated by engineers having their home terminal at Indianapolis, payment for the 22 miles not actually run would be eliminated and that the operation would be made more efficient by virtue of the elimination of a stop at Terre Haute for the purpose of changing crews. The mileage of the new runs amounted to approximately 260 miles, so that engineers assigned thereto would receive the equivalent of two-and-three-fifths basic days for each run but would receive pay only for miles actually run.

Respondent therefore proceeded to abolish the pools and the regular passenger assignments, all of which had home terminals at Terre Haute. New runs were advertised with the home terminal at Indianapolis to perform the same service, the freight service being performed by a pool operating from Indianapolis to East St. Louis and

[1] References marked P.A.—are to the "Appendix of Plaintiffs-Appellants" filed with the United States Court of Appeals for the Seventh Circuit—No. 13203, copies of which have been filed with this Court by Petitioners.

return and the passenger service being scheduled with Indianapolis as home terminal.

No prior consultation was had or required with the organization representing engineers, since this move represented a transfer of crews from one existing home terminal at Terre Haute to another existing home terminal at Indianapolis. Such changes had been made on numerous occasions in the past under existing agreements without prior negotiation with the organization representing engineers as well as those representing other train service employes. In several past cases when the organizations had attempted to require negotiations prior to such moves, decisions had consistently held that prior negotiation was not required. (Affidavit of J. J. Maher, paragraphs 5 through 7; P.A. 39-40; Supplemental Affidavit of J. J. Maher, P.A. 82.)

When notices and advertising bulletins were issued under date of April 18, 1960, the present suit resulted. (Complaint, Exhs. A through H; P.A. 19-25.) The temporary restraining order issued herein postponed, while it was in effect, the rearrangement of the runs in question.

Petitioners' Statement of Facts in their present brief (p. 13) is to the effect that Petitioners attempted to raise or list a dispute with Respondent concerning its proposed action but that Respondent refused to permit any dispute to be processed. The applicable agreement, and a supplemental agreement, provide an established method for the processing of grievances (see Rules 4-P-1, 7-A-1, 7-A-2 and 7-B-2 of the printed agreement; Affidavit of J. J. Maher, Appendix A: P.A. 42, and also Appendix E: P.A. 67). No attempt was made by Petitioners to progress the present dispute under the existing grievance procedures (Affidavit of J. J. Maher, par. 9; P.A. 40) although Petitioners have a right to do so as was found by the District Court and affirmed by the Court of Appeals (see Petitioners Brief pp. 45 and 41 respectively).

On November 9, 1959 prior to the occurrence of the present dispute, Respondent served on the Brotherhood of Locomotive Engineers, as well as on certain other organizations representing its employes of the crafts or classes of firemen, conductors, trainmen and switchmen, a notice under Section 6 of the Railway Labor Act proposing a general revision of the collectively bargained agreements governing such employes. This notice was served as part of a national movement by substantially all Class I carriers of the United States and was necessarily cast in general terms. (Affidavit of J. J. Maher, par. 10; P.A. 40.) These proposals have been referred to and are currently the subject of national handling before an especially created Presidential Commission. Both courts below found that the dispute raised by said Section 6 notice was totally unrelated to the dispute at issue in the case at bar.

Nature of the Case and Its Disposition.

Respondent does not disagree with the recital of the proceedings in the State Court and in the United States District Court set forth on pages 14 through 16 of Petitioners' brief.

However, Respondent deems it important to call attention in somewhat more detail to the allegations of the complaint.

The complaint alleged that Respondent's action was in violation of Rule 5-P-1 of the current collectively bargained agreement governing engineers employed by Respondent. Said rule was quoted in paragraph 21 of the Complaint (P.A. 13), and paragraph 26 of the Complaint (P.A. 16) alleged that Respondent's notices of April 18, 1960 which would have carried out the change in terminals of certain engineers from Terre Haute to Indianapolis, Indiana "were and are in violation of Rule 5-P-1 of the Agreements in effect between the parties,

and such are also in violation of the provisions of the Railway Labor Act." A violation of Rule 5-P-1 was also asserted with emphasis in the affidavit of plaintiff Hilbert (P.A. 87, especially paragraphs 2-6).

The prayer of the Complaint requested in paragraph (c) thereof a hearing "on the merits", and in paragraph (d) an award of damages in the amount of $500,000. (P.A. 17, 18.) Petitioners thus sought a determination that Respondent's actions were in violation of the existing collective agreement and asked damages for the alleged breach of contract as well as an injunction against it.

Petitioners also alleged a violation of Section 6 of the Railway Labor Act based on two separate contentions. First, it was alleged that defendant had served certain notices dated November 2, 1959 to change existing agreements between Respondent and its employes represented by the Brotherhood of Locomotive Engineers. (Complaint, pars. 15-19; P.A. 10-13.) Petitioners contended that Respondent's proposed action in re-assigning these engineers constituted an illegal attempt to change agreements affecting rates of pay, rules or working conditions. Secondly, Petitioners alleged a violation of Section 6 of the Act which was closely related to the alleged violation of Rule 5-P-1 as indicated in paragraph 26 of the Complaint quoted above.

III.

ARGUMENT.

1. Summary of argument.

Under Rule 19 of this Court the question here presented is whether the Court in its sound discretion should grant the petition for a writ of certiorari, and whether there exist in this case the "special and important reasons" which might lead the Court to do so.

Petitioners' brief in support of its petition asserts that in the present case the courts below have decided an important question of Federal law in the application of the Railway Labor Act, which question has not been but should be settled by this Court, and also contend at one point (pp. 23 to 24) that the Court of Appeals has rendered a decision in conflict with the opinion of this Court in *Order of Railroad Telegraphers, et al.* v. *Chicago & North Western Railway Company*, 362 U.S. 330, 80 S. Ct. 761 (1960), rehearing denied 326 U.S. 984.

Respondent submits that the decisions by the courts below were correct under settled Federal law and were in harmony with the terms of the Railway Labor Act and the decisions of this Court construing that Act; that there is adequate basis in the Act and clear and sufficient guidance in previous decisions of this Court for the decisions below; that the holding below is not in conflict with the *Telegraphers* case; and that consequently there is no necessity for further consideration of the case by this Court.

It is submitted that the courts below correctly held (1) that the present case involves a minor dispute as that term is used in the application of the Railway Labor Act; (2) and that the Railway Labor Act does not impose any duty on a carrier to refrain from an action which it has taken and which has given rise to a minor dispute; (3) that the existence of a separate dispute over proposed changes in an agreement, such as the dispute which arose as a result of Respondent's Section 6 Notice of November 2, 1959, was unrelated to the present dispute; and (4) that there was, therefore, no statutory basis for the injunction suit by Petitioners.

All these holdings are fully supported by the law as embodied in the Railway Labor Act, and the previous decisions of this Court are sufficiently clear to obviate any need for further decision at this time.

2. This was a minor dispute.

This Court in *Elgin, Joliet & Eastern Railway Company* v. *Burley*, 325 U.S. 711, 65 S. Ct. 1282 (1945), at pp. 723 to 724 of the Opinion, set forth the distinction between disputes which are to be considered as major or minor under the Railway Labor Act. The distinction there drawn between those disputes which involve an attempt to acquire rights for the future by changing the terms of existing agreements (major disputes) and those disputes which involve the assertion of rights claimed to have accrued in the past (minor disputes) has been subsequently recognized and applied on numerous occasions by this Court and by lower courts as well settled law.

This Court has recognized disputes arising under existing agreements as minor disputes in *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railway Company*, 353 U.S. 30, 77 S. Ct. 635 (1957), and in *Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas Railroad Company*, 363 U.S. 528, 80 S. Ct. 1326 (1960), rehearing denied 364 U.S. 854.

Numerous lower courts have applied the principles of the *E. J. & E.* case. *Baltimore and Ohio Railroad Company, et al.* v. *Transport Workers Union*, et al., 271 F. 2d 87 (2d Cir. 1959), reversed and remanded on other grounds 364 U.S. 278 (1960); *Norfolk & P.B.L. Railroad Company* v. *Brotherhood of Railroad Trainmen*, 248 F. 2d 34 (4th Cir. 1957), certiorari denied 355 U.S. 914 (1958); *In re Hudson and Manhattan Railroad Company*, 172 F. Supp. 329 (1959), affirmed 267 F. 2d 941 (2d Cir. 1959), certiorari denied 363 U.S. 843; *Louisville & Nashville Railroad Company* v. *Brown*, 252 F. 2d 145 (5th Cir. 1958), certiorari denied 355 U.S. 914; *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Engineers*, 188 Fed. Supp. 72 (U.S. Dist. Ct. Vt. 1960); *Flight Engineers International Ass'n* v. *Western Airlines*, U.S. Dist. Ct. S. Dist. Calif., No. 362-61-PH April 14, 1961, reported unofficially 48 L.R.R.M. 2487, 43 Labor Cases par. 17064.

The present case essentially involves a contention that the present rights of engineers at Terre Haute have been violated. In the Complaint, Petitioners set forth and alleged a violation of Regulation 5-P-1 of the collective agreement and asked for a determination of the merits and money damages (Complaint, pars. 21, 26; P.A. 13, 16, 17-18). Several other disputes of the same character as the present one have been handled in the past by these parties as minor disputes under the grievance procedure. See the specific cases in the Affidavit of J. J. Maher (P.A. 43, 45, 48, 60-61, 62-66).

There can be no doubt that the decision by the lower courts that the present dispute constituted a minor dispute was in accordance with settled Federal law as enunciated in decisions of this Court and as applied in numerous decisions of other lower courts.

3. In a minor dispute, the Railway Labor Act does not impose an obligation on a carrier to refrain from its action which gave rise to the dispute.

The provisions of the Railway Labor Act dealing with the handling of minor disputes clearly do not impose any duty on carriers to refrain from a challenged action, *i. e.*, to maintain the status quo. They are Section 2, General Purposes (5); Section 2, First, Sixth; and Section 3, First (i), 45 U.S.C.A. Secs. 152, 153 (Petitioners' Brief, Appendix E, pp. 48-50).

Section 2, First, of the Railway Labor Act imposes the obligation on employees, as well as carriers, to make every effort to settle all disputes, including those arising out of the application or interpretation of existing collective agreements.

Specifically, with respect to such minor disputes the Act first requires, in Section 2, Second and Sixth, that union representatives and carriers "consider in conference" or "confer" with respect to such dispute. Section 2, Sixth provides that the statutory duty to confer does not

"supercede the provisions of any agreements (as to conferences) then in effect." If adjustment of the dispute in conference does not result, Section 3 of the Act (45 U.S. C.A. Section 153), becomes operative. This section establishes the National Railroad Adjustment Board to deal with minor disputes. The jurisdiction of the Board as to the types of disputes it handles is set forth in Section 3, First (i) of the Act, which provides that minor disputes shall be handled up to the chief operating officer of the carrier designated to handle such disputes and if adjustment is not reached, the dispute may be referred to the National Railroad Adjustment Board.

None of these Sections imposes any legal obligation on carriers to refrain from action or to reverse an action which has been taken which its employes have challenged as a violation of accrued rights. At most these sections only impose a duty to "confer" with respect to such disputes, and to handle them in the usual manner, with final reference, if they are not settled, to the National Railroad Adjustment Board for what amounts to compulsory arbitration. *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railway Company*, *supra*, p. 8, at page 39 of the opinion.

Petitioners' contention repeated with emphasis in Part C of its present brief, that Respondent refused to negotiate with respect to the present dispute, is misleading and erroneous. Respondent took the position that it was not required under the collective agreement to negotiate prior to making the changes in its operation, but it has never refused to confer with respect to the resulting grievances. The District Court found that Petitioners had not presented any grievances or followed the grievance procedure but instead commenced the present action. Respondent's position is and has been that there is a grievance procedure available under the contract which Petitioners have failed to follow. Affidavit of J. J. Maher, paragraphs 8 and 9, and Attachment E thereto (P.A. 40, 67-69).

Of course, even if a carrier should refuse to confer with respect to a grievance the proper remedy under the Railway Labor Act would not be to issue an injunction requiring it to annul the action which had given rise to the grievance, but would be an injunction requiring it to confer in good faith on the grievance and to handle it in the usual manner as required by the Act. Compare *Virginia Railway Co.* v. *System Federation No. 40*, 300 U.S. 515, 57 S. Ct. 592 (1937), where a carrier was enjoined to treat with the duly designated representatives of its employes.

Both courts below found correctly that Petitioners did not follow the grievance procedure but instead sought an injunction asserting a violation of the Railway Labor Act. In addition to finding no statutory basis for such an injunction the Court of Appeals suggested that such an injunction in any event should be refused in view of the *per curiam* opinion of this Court in *Manion* v. *Kansas City Terminal Ry. Co.*, 353 U.S. 927, 77 S. Ct. 706 (1957).

Decisions of this Court have clearly indicated that in a minor dispute situation no statutory obligation to maintain the status quo exists. This conclusion is implicit in the holding in *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561, 66 S. Ct. 322 (1946). In this case the Order of Railway Conductors sought an injunction against the Trustees of a railroad to prevent the assignment of certain work of operating trains within yard limits to conductors represented by the Brotherhood of Railroad Trainmen. It was alleged that such action would involve a violation of existing agreements with the Order of Railway Conductors, as representative of the road conductors who had previously manned the trains in question. The Supreme Court held in that case that the injunction should not issue to prevent the proposed action since the question of whether the agreement had been violated was referable to the National Railroad Adjustment Board.[2]

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[2] The *Pitney* case of course was a forerunner of the later cases holding that state or federal courts have no primary jurisdiction to decide disputes arising under railroad collective agreements. *Slocum* v. *Delaware Lackawanna & Western R. Co.* 339 U.S. 239, 70 S. Ct. 577 (1950); *Order of Railway Conductors* v. *Southern Ry.*, 339 U.S. 255, 70 S. Ct. 585 (1950); *Pennsylvania R. Co.* v. *Day*, 360 U.S. 548; 79 S. Ct. 1322 (1959).

It is of interest to note that the single dissenter in the *Pitney* case, Justice Rutledge, dissented on the ground that the carrier should have been required to maintain the status quo while the Adjustment Board was considering the question of alleged contract violations. The majority of this Court apparently considered and rejected the possibility that a statutory obilgation to maintain the status quo existed in the case of a minor dispute.

The same conclusion necessarily follows from the holding of this Court in *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas Railroad Company, supra,* p. 8. In that case the Court held that where a union threatened a strike over a minor dispute the strike could be enjoined but that a District Court could impose conditions on the injunction which might require the railroad to maintain the status quo. It is significant, however, that at no time did the Court suggest that the Railway Labor Act imposed any obligation on carriers to maintain the status quo. Rather the *M-K-T* case was decided on general equitable principles which applied in the exercise of the Court's equitable jurisdiction to restrain the strike. If the obligation contended for by Petitioners in fact existed the Court in the *M-K-T* case would presumably have held that such conditions must be imposed in every minor dispute situation.

The absence of a statutory obligation to maintain the status quo has been recognized in lower court decisions. In *In re Hudson and Manhattan Railway Company,* 172 F. Supp. 329, the District Court denied a cross-motion of the defendant unions to have the status quo maintained pending decision of the National Railroad Adjustment Board. Its decision was affirmed at 267 F. 2d 941 and certiorari was denied at 363 U.S. 843. See also *Pennsyvania Railroad Company* v. *Transport Workers Union,* 178 F. Supp. 53 (1959); *Flight Engineers International Association v. Western Airlines, supra,* p. 8.

In addition, the Court of Appeals of New York refused in *Brennan* v. *Delaware, Lackawanna & Western Railroad Company*, 303 N.Y. 411, 103 N.E. 2d 532 (1952), to issue an injunction restraining an alleged violation of a collective agreement. Certiorari was denied in this case at 343 U.S. 977 (1952).

4. The dispute created by Respondents' Section 6 notice of November 2, 1959 has no relation to this case.

Both courts below found that the fact that the Respondents, acting under Section 6 of the Railway Labor Act, served on the Brotherhood of Locomotive Engineers a general notice for revision of the agreements covering the employment of engineers, including certain proposals as to changes in home terminals, had no relevance to the present dispute, which did not arise until April of 1960. The Section 6 notices in question were served incident to a national movement now under way for a general revision of operating employes collectively bargained agreements (Affidavit of J. J. Maher, paragraph 10 and Appendix F) (P.A. 40-41, 70-81, especially page 78).

By constant reference to this Section 6 notice, which admittedly created a major dispute under Section 6 of the Act, Petitioners attempt to give the impression that the obligations of Section 6 were somehow carried over to the minor dispute which arose approximately 6 months later (see Section A of Petitioner's Argument, pages 17 through 21).

Section 6 of the Act, 45 U.S.C.A. Sec. 156 (Petitioners Brief, Appendix E, p. 52) of course, provides that where a written notice of "an intended change in agreements affecting rate of pay, rules or working conditions" has been served, and while the major dispute procedures of the Act are being followed, "rates of pay, rules or working conditions shall not be altered by the carrier." Section 2, Seventh 45 U.S.C.A. Sec. 152 (Petitioners' Brief,

Appendix E, p. 50), makes it clear that this provision refers to proposed changes in rates of pay, rules or working conditions of employees "as a class, as embodied in agreements." Both courts below recognized what should be obvious, namely that the obligation of Section 6 to maintain existing rates of pay, rules and working conditions during the period that new or changed ones are being negotiated, can only mean the continued application of existing agreements, and that in the course of such application minor disputes may arise. This is precisely what occurred here. However, the existence of an outstanding Section 6 notice cannot properly have the legal result that a carrier cannot take any action under an existing agreement which its employes choose to challenge. If this were the law it is perfectly obvious that the administration of existing agreements would be completely paralyzed during any period of time when a Section 6 notice was outstanding.

It is submitted that the findings of the lower courts that there was no relation between the Section 6 notice of November 2, 1959 and the dispute which arose in April of 1960 do not present any unusual or unsettled Federal question. Rather, they are in the nature of factual findings that there were in existence two disputes which were completely separate. Each of these disputes is subject to different statutory treatment as has been established in numerous cases. The principles governing each type of dispute are clear and no necessity exists for this Court to grant certiorari in order to review what is essentially a factual finding by the lower courts as to the relationship of the two disputes. Compare *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Engineers, supra,* p. 8.

Petitioner asserts a conflict between the decision of the Court of Appeals and the decision of this Court in *Order of Railroad Telegraphers* v. *Chicago & Northwestern Railroad Company,* 362 U.S. 330, 80 S. Ct. 761 (1960), rehearing denied 326 U.S. 934, asserting with emphasis,

but with inaccurate paraphrase, that the *Telegraphers* case held that "it is impossible to classify a major change affecting jobs, as a minor dispute." (Petitioner's brief, page 23.)

Respondent submits that there is no confusion or contradiction between the two cases. The question in the *Telegraphers* case was whether the organization, after mediation proceedings had been completed, could lawfully strike to force acceptance of a demand served on the carrier under Section 6 of the Act that existing agreements be changed to prevent the carrier from abolishing jobs without prior agreement of the organization. The Court held that such a demand was a proper subject for collective bargaining, and that the service of a notice embodying it created a major dispute, it being in the language of the Court "a dispute relating to a major change, affecting jobs, in an existing collective bargaining agreement." 326 U.S. 330, 341.

The Court of Appeals here clearly and correctly held that the present case was not such a major dispute, that there was no relevant Section 6 notice involved, and that the assertion of the Petitioners here was essentially the assertion of an accrued or vested right. Therefore, the decision of the Court of Appeals was not in the field involved in the *Telegraphers* case and its decision is not in conflict with this Court's decision in that case.

5. There is no statutory basis for the issuance of an injunction.

It is submitted that since the courts below correctly applied clearly established principles in determining that this case involved a minor dispute and that no statutory obligation to maintain the status quo existed, there is no unusual principle of Federal law involved in the conclusion of the courts that no injunction could properly issue.

The Court of Appeals correctly followed established principles in holding that Federal courts generally are barred by the Norris-LaGuardia Act from issuing injunctions in a labor dispute, unless necessary to vindicate the specific provisions of the Railway Labor Act (Petitioners Brief pp. 37-38). These principles have been established in previous decisions of this Court dealing with the relationship between the Norris-LaGuardia Act and the Railway Labor Act. *Virginian Railway Company* v. *System Federation No. 40,* 300 U.S. 515, 57 S. Ct. 592 (1937); *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railroad Company, supra* p. 8; *Order of Railway Telegraphers* v. *Chicago and Northwestern Railroad Company, supra* p. 7.

In the absence of any provisions of the Railway Labor Act specifically requiring Respondent to maintain the status quo, there can be no basis for the issuance of an injunction under the facts here presented.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the Petition for a Writ of Certiorari should be denied.

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SUPREME COURT, U. S.
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 353

WILLIAM E. HILBERT, JOSEPH MAUER, C. W. CURTIS and HARRY M. HOWELL, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,

Petitioners,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,

Respondent.

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE PENNSYLVANIA RAILROAD COMPANY,

Respondent.

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

Petitioners respectfully move for leave to file the annexed Petition for Rehearing of the order of this Court,

entered on November 6, 1961, denying the Petition for Writ of Certiorari in this case.

Respectfully submitted,

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THE PENNSYLVANIA RAILROAD COMPANY,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To: The Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that this Court grant a Rehearing as to its Order of November 6, 1961, denying their Petition for Certiorari, and that a Writ of Certiorari issue to re-

view the judgment of the Court of Appeals for the Seventh Circuit entered in the above entitled action, as prayed for in their Petition for Certiorari filed herein on August 25, 1961.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

On November 6, 1961, the Court entered in this case the following order:

> "The petition for writ of certiorari is denied. The Chief Justice, Mr. Justice Black, and Mr. Justice Brennan are of the opinion certiorari should be granted."

Rehearing is sought on the substantial ground, *available to Petitioners although not previously presented*,[1] that the matters presented in the Petition for Certiorari are national in scope and character, and of substantial importance to the jobs, homes, and families of several hundred thousand railroad employees, working under the Railway Labor Act in many cities and towns throughout the United States,[2] although the instant Petition sought relief only for approximately 100 locomotive engineers in Terre Haute, Indiana.

Petitioners sincerely suggest that they do not want to be presumptuous at this time, but it could be that three of the Honorable Justices of this Court did consider the matters presented in the Petition for Certiorari to be national in

1. Rule 58(2) of the Revised Rules of the Supreme Court of the United States (Adopted April 12, 1954, effective July 1, 1954), 346 U. S. 945, 98 L. ed (Court Rules) 44-5; Rule 58(2), U. S. C. A. (Supp. 1960); *Schriber-Schroth Company* v. *Cleveland Trust Company* (1938), 305 U. S. 47-50, 59 S. Ct. 8-9.

2. Respondent's Brief herein (p. 8, *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Engineers*, 188 F. Supp. 721-727) indicates already, still another case (train runs between Ogdensburg, N. Y. and Alburg, Vt.) in which the *same identical* "Section 6 Notice" of November 2, 1959 has become involved with a subsequent change by another railroad of working conditions.

scope and character and of substantial importance to all the employees in the railroad industry; and if such be true, perhaps the Court could perforce at this time reconsider this proceeding in the light of its true national character and substantial importance to the thousands of railway workers in America today.[3]

Although Petitioners did not do so, nevertheless, Respondent in its Brief herein,[4] did point out the national scope and character of the issues before this Court, wherein Respondent asserted:

> "Both courts below found that the fact that the Respondents, acting under Section 6 of the Railway Labor Act, served on the Brotherhood of Locomotive Engineers a general notice for revision of the agreements covering the employment of engineers, including certain proposals as to changes in home terminals, had no relevance to the present dispute, which did not arise until April of 1960. *The Section 6 notices in question were served incident to a national movement now under way for a general revision of operating employes collectively* bargained agreements (Affidavit of J. J. Maher, paragraph 10 and Appendix F) (P. A. 40-41, 70-81, especially page 78."[5] (Our italics.)

The Affidavit[6] of said J. J. Maher, which was filed in support of Respondent's "Motion To Dismiss Or For Sum-

3. "For instance, if there were five votes against granting the petition and four in favor of granting it, it would be granted, because we proceed upon the theory that when as many as four members of the court, and even three in some instances, are impressed with the propriety of our taking the case the petition should be granted. This is the uniform way in which petitions for writs of certiorari are considered." Testimony of Justice Van Devanter in Hearings before Senate Committee on the Judiciary on S. 2060 and 2061, 68 Cong., 1st Sess., p. 29 (1924).

4. Page 13 of Respondent's Brief.

5. *Ibid.*

6. P. A. 39-81 (Reference to "Appendix of Plaintiffs-Appellees" as filed with the United States Court of Appeals for the Seventh Circuit, No. 13203, copies of which have been filed with this Court by Petitioners.

mary Judgment",[7] in treating the said "Section 6 Notice", its import and effect in relationship to the issues involved, did specifically, clearly, and profusely set forth statements as to the complete national scope and character, and obvious substantial import, not only to Respondent and its employees, but to *all* Class I *railroads* and the *thousands of engine and train service employees* of said railroads.[8]

Should so many employees engaged in the railroad industry be literally legally abused by the well known "*long-delayed decisions*"[9] of the Railroad Adjustment Board without having some recourse to this Court?

Should so many employees in the railroad industry be subject to discharge "*from positions long held*"[10] by them, "*and the dislocation of others from their homes*"[11] without some recourse to this Court? In so far as these railroad employees are concerned, the time to seek and find their

7. P. A. 38.

8. "On November 2, 1959, defendant served on the Brotherhood of Locomotive Engineers, as representative of engineers employed by defendant, a notice of its desire for a general revision of existing agreements which, if adopted, would have the effect of revising Regulation 5-P-1 among other provisions of the presently effective agreement. A true copy of said notice is attached hereto and made a part hereof as Appendix 'F'. A notice in identical terms was served by defendant on its employes as represented by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, namely firemen, hostlers and train service employes. On information and belief, similar notices were served by all of the Class I railroads of the United States on the representatives of engine and train service employes. This notice was served as part of a national movement by the Class I carriers for a general revision of working rules and agreements covering engine and train service. * * *." P. A. 40-1.

9. "To fulfill its function the *District Court must* also *consider* the *hardships*, if any, *that* would *arise if* the *employees* were *required to await* the *Board's* sometimes *long-delayed decisions* without recourse to a strike." (Our italics.) 363 U. S. 528-534.

10. 363 U. S. 528-534.

11. *Ibid.*

legal answer is now, not five or more years hence, from a Board and at a time when even a victory by said employees "*would be but an empty victory*"[12] wholly inadequate, for "*it might well be impossible to make them whole in any realistic sense.*"[13]

It will be manifestly impossible for Petitioners, and the thousands of other railway employees in the same *dubious predicament*, if they should be successful before the National Railroad Adjustment Board, to correct hardships already endured; nor could payments of money by Respondent be adequate or *realistic*[14] compensation. Monetary benefits can not make up for the objectionable changes in working conditions, loss of runs, loss of jobs, loss of seniority rights, suffered by railway employees for years, and perhaps forever. It can be stated without fear of contradiction, that railway employees can not be adequately compensated by the Board for the years that they may be prevented from working at their place of residence and their long established Home Terminals.[15]

In the instant case, and undoubtedly there are many similar ones now in the process throughout the United

12. *Ibid.*

13. "It is not difficult to perceive how the conditions imposed in this case could be deemed to serve to protect the jurisdiction of the Board. The *dispute* out of which the judicial controversy arose does not merely concern rates of pay or job assignments, but rather *involves* the *discharge of employees from positions long held* and *the dislocation of others from their homes. From the point of view of these employees, the critical point in the dispute may be when the change is made, for, by the time of the frequently long-delayed Board decision, it might well be impossible to make them whole in any realistic sense.* If this be so, the action of the district judge, rather than defeating the Board's jurisdiction, would operate to preserve that jurisdiction by preventing injury so irreparable that a decision of the Board in the unions' favor would be but an empty victory." (Our italics.) 363 U. S. 528-534.

14. *Ibid.*

15. *Ibid.*

States,[16] Respondent posted the *Notices* and *Advertisement Bulletins*, and arbitrarily directed that they would take effect just eight (8) days thereafter; Petitioners attempted to present a dispute as to such; Respondent summarily and arbitrarily denied that a dispute could exist, and refused to negotiate thereon; such was a violation of the Act on the part of the Respondent; Petitioners could not go to the Adjustment Board, "because the issue was not ripe for presentation to it."[17]

"Here the dispute was only a few days old when" the *radical changes* in conditions of employment, *loss* of numerous jobs, etc., were to take place at Terre Haute, "and neither party could go to the Board".[18]

All that Petitioners sought in the District Court was injunctive relief "to prevent the frustration of the statutory grievance-adjustment procedure".[19]

The nature of the rights of Petitioners, *and all other railway employees*, is such that unless they are protected before the *drastic changes* take place, no adequate future remedy can be provided them.[20]

No agency under the Railway Labor Act is empowered to give injunctive relief tantamount to that which may be ordered by a District Court in imposing reasonable *status quo* provisions.[21]

This Court has long decided that injunctive relief may be granted to vindicate the processes of the Railway Labor Act, and that a District Court has the jurisdiction and power to issue necessary injunctive orders to enforce com-

16. *Supra*, note 2.
17. 252 F. 2d 149-153.
18. *Id.* at 154.
19. *Ibid.*
20. 363 U. S. 528-534.
21. *Ibid.*

pliance with the requirements of the Railway Labor Act, notwithstanding the provisions of the Norris-LaGuardia Act.[22]

As recently as June 19, 1961, the Court reiterated the principle that the Federal Courts have authority "to enjoin compliance with various mandates of the Railway Labor Act".[23]

It is also now well decided by the Court, that even in the instance involving a "minor dispute", a railroad may obtain injunctive relief against a strike by a union and its members, pending the adjudication of such a dispute before the National Railroad Adjustment Board, *and that in the process*, a District Court may condition the injunctive relief upon the railroad maintaining the *status quo*.[24]

Petitioners, and thousands of other similar railway employees, earnestly believe that it should make no difference in the Federal Courts, in proceedings involving interpretation of the Railway Labor Act, as to whom might be the plaintiff or defendant; or to be more specific, it should make no difference under the law, in so far as the Railway Labor Act is concerned, as to whether a railroad or a union comes into court as a plaintiff; the law should be equal to all, and discriminatory as to none.

If a railroad is entitled to enjoin *self-help*[25] in the form of a strike on the part of union, wherein a minor dispute is involved, then a union should be permitted into the same Court and obtain similar injunctive relief, where a minor dispute is involved, if a railroad has violated the statutory provisions of the Act, as flagrantly done by the Respondent

22. 353 U. S. 30-41-2.
23. 367 U. S. 740; 6 L. ed. 2d 1141-1163.
24. 363 U. S. 528.
25. *Supra*, note 17.

in this case,[26] the Respondent to the contrary notwithstanding.

As further pointed out by the Court in a recent decision, a *primary purpose* of the major revisions to the Railway Labor Act in 1934 was to further the basic congressional

26. In the last paragraph on page 4 of Respondent's Brief herein, it is stated: "Petitioners' Statement of Facts in their present brief (p. 13) is to the effect that Petitioners attempted to raise or list a dispute with Respondent concerning its proposed action but that Respondent refused to permit any dispute to be processed." Respondent then proceeds to cleverly and quite deceptively recite that the applicable agreements between the parties provide an established method for the processing of grievances and that "No attempt was made by Petitioners to progress the present dispute under the existing grievance procedures * * * although Petitioners have a right to do so * * *." With all due deference to the Court, such a clever and deceptive statement on the part of Respondent, may have had a tendency to mislead the Court as to the actual facts. It will be observed, that Respondent never actually denied at any time the categorical statements of Petitioners on pages 12 and 13 of their Petition herein, wherein it was clearly and unequivocally stated:

"When Respondent issued the aforesaid Notices and Advertisement Bulletins in February and March of 1960, Petitioners, both orally and in writing, attempted to *raise* and *list* a dispute with respect thereto under an agreement between the parties (Appendix E attached to Affidavit of J. J. Maher; P. A. 67-69), but Respondent summarily, arbitrarily, and unilaterally took the position that there could be no dispute *raised* or *listed* as to such Notices and Advertisement Bulletins, for according to Respondent, it had the *absolute* right to take such action exclusive of Petitioners, and that negotiation with respect thereto was not required under the Railway Labor Act. (P. A. 101.)"

"Petitioners also attempted to *raise* or list a dispute and voice disapproval of the arbitrary, unilateral and summary action by Respondent in the posting at Terre Haute of the aforesaid *new* Notices and Advertisement Bulletins on April 18, 1960, to take effect just eight days later on April 26, 1960, but Respondent steadfastly refused to recognize that any dispute could or did exist between Petitioners and Respondent, and refused to negotiate thereon. (P. A. 101-102.)"

"Petitioners made every effort to present a dispute to Respondent, but the railroad would not recognize that any dispute could exist, and refused to permit any dispute to be processed. (P. A. 102.)"

The affidavits of J. J. Maher (P. A. 39 and P. A. 82) were sub-

policy of self-adjustment of the problems between labor organizations and the carriers.[27]

Respondent has violated the basic congressional policy of the Railway Labor Act, as well as specific provisions thereof, by arbitrarily and summarily refusing to permit

mitted by Respondent on June 10, 1960 and July 5, 1960, in support of its "Motion To Dismiss Or For Summary Judgment" (P. A. 38); the affidavit of Hilbert (P. A. 87) was filed on behalf of Petitioners on July 15, 1960; thereafter, Respondent was authorized by order of the District Court (R. 322-3) to file a "counter supplemental affidavit", and thereby permit a challenge of the facts presented by Petitioners, but Respondent declined to do so.

The above was not the only instance of a clever and deceptive presentation of the facts to the Court; on page 3 of their Brief herein, Respondent stated: "Indianapolis has for many years been an established home terminal for road, train and engine crews as has Terre Haute. (Affidavit of J. J. Maher, par. 4; P. A. 39.)"

The above statement is not a fair and correct one in light of the facts in the instant case: Indianapolis may have been an established Home Terminal for some road, train, and engine crews of Respondent, but Indianapolis has *never* been the Home Terminal of the locomotive engineers involved in this proceeding, for they have had their Home Terminal at Terre Haute for many years last past (P. A. 93), and have an agreement providing that Terre Haute shall be their Home Terminal. (P. A. 92-93.)

In still another instance on page 2 of its Brief, Respondent would tend to lead one to believe that it had always operated trains from Indianapolis to East St. Louis and therefore there should be no question raised on the part of Petitioners; however, the actual facts are that Respondent operated its trains, by locomotive engineers, not from Indianapolis to East St. Louis, but from Terre Haute to Indianapolis, then back to Terre Haute, and, from Terre Haute to East St. Louis, and from there back to Terre Haute. (P. A. 91-2.)

Again on page 3 of Respondent's Brief, it asserts as a fact: "Respondent determined that by arranging its freight and passenger service between Indianapolis and East St. Louis to be operated by engineers having their home terminal at Indianapolis, payment for the 22 miles not actually run would be eliminated and that the operation would be made more efficient by virtue of the elimination of a stop at Terre Haute for the purpose of changing crews." Such so-called facts are not in the record in the instant case; perhaps Respondent could have made the above statement by means of deduction in its argument, but the same has no place in Respondent's "Statement Of The Case" specifically entitled "Facts".

27. 367 U. S. 740; 6 L. ed. 2d 1141-1155.

Petitioners to present a dispute to its representatives for voluntary adjustment, and also by refusing steadfastly to negotiate with respect thereto.[28]

In their Petition for Certiorari, Petitioners brought to the attention of the Court "footnote 3" in the *Missouri-Kansas-Texas* case, *supra* (1960);[29] the Court indicated in said "footnote", that it had not decided in the *Chicago-River* case (1950),[30] nor was it deciding in *Missouri-Kansas-Texas* that a federal court could enjoin a carrier from effectuating changes giving rise to a dispute independently of a suit for equitable relief by a railroad. And, as petitioners pointed out, they are seeking, among other things, a decision to such question; it is an important question to the thousands of railway employees in this country; it is without doubt of national scope and character.

Such question should not only be decided by the Court at this late date, but the decision should be favorable to Petitioners in the instant case.

Petitioners reiterate with all sincerity, that a railroad should not be entitled to any more relief under the Act than a union and its members; if a railroad is entitled to injunctive relief, then *a fortiori*, a union should likewise be entitled to injunctive relief, especially in a situation as in the case at bar, wherein the Respondent railroad, on extremely short notice, arbitrarily determined that many jobs were to be abolished, many long existent conditions of employment were to be changed, that new jobs were to be created, new working conditions were established, and, in violation of the Railway Labor Act, Respondent refused to negotiate with respect thereto.[31]

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28. *Ibid.*
29. 363 U. S. 528-531.
30. 353 U. S. 30.
31. *Supra*, notes 26, 27, and 28.

And, again Petitioners respectfully reiterate, that if injunctive relief can not be granted Petitioners, it might just as well be stated *as a matter of law*, that in order for a union to obtain relief comparable to that which can be secured by a railroad, a union must perforce take the law into its own hands, so to speak, by going on strike, thereby requiring a railroad to seek injunctive relief, and thereafter in the process, the union is required to beseech the court to condition the injunction upon maintenance of the *status quo*.

Petitioners do not believe the law, as promulgated by the Court, to be so harsh or unfair.

In addition to all of the above, Respondent took the initiative to issue the said "Section 6 Notice" of November 2, 1959, in conjunction with *all* Class I railroads on a national scope,[32] and sought thereby on a wholesale basis in conjunction with *all* Class I railroads to eliminate *all agreements*, not only with Petitioners, but with *all* unions representing the thousands of engine and train service employees.[33]

Shortly thereafter (February, March, and April of 1960) Respondent sought to do some of the same identical things on a local basis at Terre Haute.

In spite of the "Section 6 Notice", and regardless of the fact that Petitioners and Respondent were still negotiating with respect thereto, Respondent issued *new* notices at Terre Haute, thereby altering *rules or working* conditions in violation of the *status quo* provisions of the Railway Labor Act.

Respondent was not the only railroad that did such, as can be verified by Respondent's Brief herein.[34]

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32. *Supra*, note 8.

33. *Ibid.*

34. *Supra*, note 2.

Petitioners' claim for relief herein, is not an isolated one coming toward this Court.[35] Such represents a problem national in scope and character, and it is respectfully submitted that this problem should now be decided for the benefit of all railroad employees.

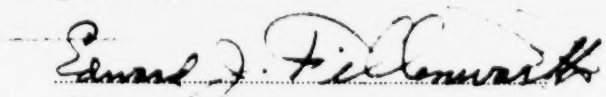
The railroads of this country shrould not be permitted to issue a *national* "Section 6 Notice" to *all* unions, and then proceed to violate the *status quo* provisions of the Act, by initiating in a summary, arbitrary, and unilateral fashion, a similar or identical notice on a local level as was done at Terre Haute.

Under the basic congressional policy of the Railway Labor Act, the specific provisions of the Act and equitable principles, Petitioners should have been entitled to injunctive relief.

CONCLUSION.

For the reasons set forth above, it is respectfully urged, and Petitioners earnestly beseech the Court, that a Rehearing be granted as to its order of November 6, 1961, and that a Writ of Certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit entered in the above entitled action.

Respectfully submitted,



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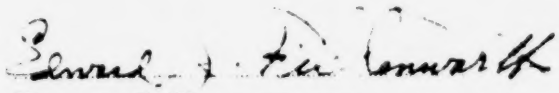
35. *Ibid.*

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in Rule 58 (2) of the Rules of this Court.



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